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and

U.S. Court of International Trade

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U.S. Customs Service

T.D. 01–67 and 01–68

General Notices

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NOTICE

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U.S. Customs Service

Treasury Decisions

(T.D. 01–67)

CUSTOMS DELEGATION ORDER NO. 01–006

CUSTOMS SUCCESSION AND PERFORMANCE OF ESSENTIAL FUNCTIONS IN THE EVENT OF A NATIONAL SECURITY EMERGENCY

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Delegation order.

SUMMARY: This document sets forth Customs Delegation Order No. 01–006, signed by the Acting Commissioner of Customs on August 7, 2001, providing the order of succession of officers of the Customs Service to act as Commissioner of Customs in the event of a national emergency and delegating to various field officers the authority to perform essential functions in the event of a national security emergency.

EFFECTIVE DATE: August 7, 2001.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On August 7, 2001, Acting Commissioner of Customs Charles W. Winwood issued Customs Delegation Order Number 01–006, effective on that date, entitled "Customs Succession and Performance of Essential Functions in the Event of a National Security Emergency."

The sources of the authority being delegated are Treasury Order 165 and Executive Order 12656, dated November 18, 1988.

Delegation Order 65, dated September 28, 1982, is superseded by Delegation Order Number 01–006.

The text of the delegation order is set forth below.

Dated: September 17, 2001.

DOUGLAS M. BROWNING,
Acting Assistant Commissioner,
Office of Regulations and Rulings.

CUSTOMS SUCCESSION AND PERFORMANCE OF ESSENTIAL FUNCTIONS IN THE EVENT OF A NATIONAL SECURITY EMERGENCY

1. *Order of Commissioner of Customs succession*

Under the authority of Treasury Department Order No. 165, and in compliance with Executive Order 12656, dated November 18, 1988, it is hereby ordered that the following officers of the U.S. Customs Service, in the order of succession enumerated, shall act as Commissioner, in the event of a national security emergency, which is defined as any occurrence, including natural disaster, military attack, technological emergency, or other emergency, that seriously degrades or seriously threatens the national security of the United States, or during the absence or disability of the Commissioner, or when there is a vacancy in such office. The order of succession is as follows:

The Deputy Commissioner of Customs
The Assistant Commissioner, Field Operations
The Assistant Commissioner, Investigations
The Assistant Commissioner, Finance
The Assistant Commissioner, Information and Technology
The Assistant Commissioner, Strategic Trade
The Assistant Commissioner, International Affairs
The Assistant Commissioner, Regulations and Rulings
The Assistant Commissioner, Internal Affairs
The Assistant Commissioner, Human Resources Management
The Assistant Commissioner, Training and Development
The Assistant Commissioner, Public Affairs
The Assistant Commissioner, Congressional Affairs
The Trade Ombudsman
The Director, Field Operations, New York Customs Management Center
The Director, Field Operations, South Florida Customs Management Center

2. *Authority to continue to perform essential localized functions*

By virtue of the authority vested in the Commissioner by Treasury Department Order No. 165, and in compliance with Executive Order 12656, dated November 18, 1988, it is hereby delegated to the Directors of Field Operations; Port Directors; and Special Agents-in-Charge, the authority to perform any function of the Commissioner of Customs which is necessary to ensure continuous performance of essential local functions otherwise assigned to such officers, thereby assuring the continuity of the Federal Government in a national security emergency, as defined in (1) above. This delegation of authority will remain in effect until notice has been received from proper authority that it has been terminated.

Additional guidance may be found under Federal Preparedness Circular FPC–61 dated August 2, 1991 (Appendix K).

CHARLES W. WINWOOD,
Acting Commissioner of Customs.

[Published in the Federal Register, September 21, 2001 (66 FR 48739)]

19 CFR Parts 159 and 178

(T.D. 01–68)

RIN 1515–AC84

DISTRIBUTION OF CONTINUED DUMPING AND SUBSIDY OFFSET TO AFFECTED DOMESTIC PRODUCERS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to implement the Continued Dumping and Subsidy Offset Act of 2000, by prescribing the administrative procedures, including the time and manner, under which antidumping and countervailing duties assessed on imported products would be distributed to affected domestic producers as an offset for certain qualifying expenditures. This distribution to the affected producers is known as the continued dumping and subsidy offset.

EFFECTIVE DATE: September 21, 2001.

FOR FURTHER INFORMATION CONTACT: Jeffrey J. Laxague, Office of Regulations and Rulings, (202–927–0505).

SUPPLEMENTARY INFORMATION:

BACKGROUND

Antidumping duties are imposed upon imported merchandise that the U.S. Department of Commerce has found is, or is likely to be, sold in the United States at less than its fair value. Countervailing duties are imposed upon imported merchandise that the Department of Commerce determines benefits from actionable subsidies bestowed by a foreign government. In all antidumping cases, and in most countervailing duty cases, these duties are only assessed if the U.S. International Trade Commission determines that the imported goods cause material injury or the threat of material injury to a domestic industry. The rules and procedures concerning proceedings leading to orders or findings under which antidumping and countervailing duties are assessed are found in 19 U.S.C. 1671 *et seq.*, in part 207 of the regulations of the U.S. International Trade Commission (19 CFR chapter II, part 207), and in part 351 of the regulations of the International Trade Administration, U.S. Department of Commerce (19 CFR chapter III, part 351).

The Continued Dumping and Subsidy Offset Act of 2000 ("CDSOA") was enacted on October 28, 2000, as part of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001 ("Act") (Pub. L. 106–387; 114 Stat. 1549). The provisions of the CDSOA are contained in Title X (sections 1001–1003) of the Act.

The CDSOA, in section 1003 of the Act, amended Title VII of the Tariff Act of1930, by adding a new section 754 (codified at 19 U.S.C. 1675c) in order to provide that assessed duties received pursuant to a countervailing duty order, an antidumping duty order, or an antidumping duty finding under the Antidumping Act of 1921, would be distributed by Customs to affected domestic producers for certain qualifying expenditures that these producers incur after the issuance of such an antidumping duty order or finding, or countervailing duty order. This distribution is called the continued dumping and subsidy offset. It is noted that the continued dumping and subsidy offset under 19 U.S.C. 1675c covers all antidumping and countervailing duty assessments made on or after October 1, 2000, in connection with all antidumping duty orders or findings, or countervailing duty orders, in effect as of January 1, 1999, or issued thereafter. Pursuant to 19 U.S.C. 1675c, the Commissioner of Customs shall prescribe procedures for distribution of the continued dumping and subsidy offset.

CUSTOMS RULEMAKING

Accordingly, by a document published in the Federal Register (66 FR 33920) on June 26, 2001, Customs proposed to amend the Customs Regulations to add a new subpart F to part 159 (19 CFR part 159, subpart F; §§ 159.61–159.64) that principally prescribed the procedures, including the time and manner, and the required information necessary for the distribution of antidumping and countervailing duties assessed under an appropriate order or finding, that would be payable as a continued dumping and subsidy offset to those affected domestic producers for their qualifying expenditures, in accordance with section 754 of the Tariff Act of 1930, as amended (19 U.S.C. 1675c).

In addition, under the BACKGROUND heading of the proposed rule document (66 FR at 33922–33923), Customs provided several illustrations of the administrative process by which Customs would make distributions of the continued dumping and subsidy offset to affected domestic producers.

DISCUSSION OF COMMENTS

The June 26, 2001, notice of proposed rulemaking made provision for the submission of public comments on the proposed regulations for consideration before adoption of those regulations as a final rule. The prescribed comment period closed on July 26, 2001. Forty comments were received by Customs. The issues raised in the comments are summarized and addressed below.

AFFECTED DOMESTIC PRODUCERS

Comment:

Several commenters requested that Customs clarify the term "producer". It was asked in this context whether companies that have filed for bankruptcy could still be affected domestic producers for purposes of the statute.

Customs Response:

Customs agrees. Companies that have filed for bankruptcy would be affected domestic producers for purposes of section 1675c, if they remained in operation and continued to produce the product covered by the relevant order or finding, and provided further that such companies complied with the other requirements of the statute.

In addition, companies will be considered to have ceased production if they did not produce the product covered by an order or finding at all during the fiscal year that is the subject of the disbursement. This latter requirement is added in § 159.61(b)(1) which is redesignated as § 159.61(b)(2)(i) in this final rule document.

Comment:

Several commenters proposed that domestic parties not on the list of affected domestic producers, as prepared by the U.S. International Trade Commission (USITC), be allowed to file certifications to claim an offset. Also, many comments included a request that the proposed regulations be clarified to provide for the filing of certifications by successor companies to those companies that appeared on the USITC list.

Customs Response:

Under the 19 U.S.C. 1675c(d)(1), and as indicated in § 159.61(b), only a party on the USITC list is potentially eligible to receive an offset as an affected domestic producer. However, Customs agrees that a provision must be made for successor companies, as discussed below.

Specifically, where a company has succeeded to the operations of another company that appeared on the USITC list of affected domestic producers, the successor company may file a certification on behalf of the predecessor company. The USITC list is contained in the notice of intention to distribute the continued dumping and subsidy offset that must be published in the Federal Register in accordance with § 159.62. In its certification, the company must name the predecessor company to which it has succeeded and it must describe in detail the duly authorized succession by which it is entitled to file the certification on behalf of the predecessor.

A new paragraph (b)(1)(i) is added to § 159.61 in the final rule to address the filing of certifications by successor companies. As already noted, paragraph (b)(1) of proposed § 159.61 is redesignated as paragraph (b)(2)(i) in the final rule.

Comment:

A number of commenters inquired as to whether an association whose name appeared on the USITC list for an order or finding could file a certification on behalf of its member companies and, if so, what qualifying expenditures could be included in the certification. It was also asked whether a company that was a member of such an association could file a certification, where the member company did not appear on the USITC list.

Customs Response:

An association that appears on the USITC list of affected domestic producers in connection with a given order or finding, as set forth in the notice of distribution published in the Federal Register under § 159.62, cannot file a certification on behalf of its member companies. Customs does not believe that an association can properly certify, and thus be held liable for the accuracy of, member companies' qualifying expenditures. In order to certify, one must have direct knowledge of the validity of the expenses being claimed. In Customs view, associations are in no position to do so. The association may, of course, file a certification in its own right to claim an offset for that order or finding, but its qualifying expenditures would naturally be limited to those expenditures that the association itself has incurred in connection with that particular case, after the date of the order or finding.

In addition, an individual member of the association may file a certification to claim an offset for the same order or finding, even though the member company does not appear on the USITC list, provided that the company also meets the other requirements of the statute. It was clearly not the intent of Congress to prevent members of an association that initiated a proceeding at the USITC from filing certifications so that they may qualify for an offset under the statute, since an affected domestic producer is defined as "any manufacturer, producer, farmer, rancher, or worker representative (including associations of such persons)".

In its certification, the company must name the association appearing on the USITC list, of which it is a member, and the company must specifically establish that it was a member of the association at the time the association filed the petition with the USITC.

To allow for the filing of certifications by an association's member companies that are not included on the USITC list of affected domestic producers, a new paragraph (b)(1)(ii) is added to § 159.61. Paragraph (b)(2) of proposed § 159.61 is redesignated as paragraph (b)(2)(ii) in the final rule.

Comment:

A number of commenters suggested that Customs consult with the USITC on any questions that arise concerning the USITC list of affected domestic producers that appears in the Customs notice of intention to distribute the offset.

Customs Response:

Customs already consults with the USITC in this matter and will continue to do so.

Comment:

Some commenters suggested that Customs remove questionable parties from the list of affected domestic producers that is forwarded to Customs by the USITC, for example companies which do not appear to meet the domestic production criteria for filing a certification.

Customs Response:

Customs will not arbitrarily delete parties from the list of companies supplied by the USITC. If a certification is submitted by a company appearing on the USITC list that third parties believe contains false statements regarding eligibility to file a certification and receive an offset, they may notify the Customs Office of Investigations regarding their allegations.

QUALIFYING EXPENDITURES

Comment:

A number of commenters requested clarification of the term "qualifying expenditures". These commenters basically wanted to know the end of the time period within which qualifying expenditures could be incurred for purposes of claiming an offset. For example, if an order was terminated in January 2000, could qualifying expenditures be claimed if they are incurred up until the date the first certification is filed (October 2001), or are the expenditures incurred limited by the date of the termination?

Customs Response:

A qualifying expenditure that may be offset by a distribution of assessed antidumping and countervailing duties encompasses those expenditures that are incurred after the issuance of an order or finding and prior to the termination of the order or finding. Proposed § 159.61(c) is revised in the final rule to reflect this.

Customs expects that claims made for qualifying expenditures will be made in accordance with the statute and that they will be supported by records that would be kept by any prudent person in the ordinary course of business, as required in § 159.63(b) and (c). The record of expenditures being certified should conform to Generally Accepted Accounting Principles in determining when a qualifying expenditure has occurred. To the extent that common problem areas are found during Customs verifications of certifications, Customs will report on such issues in its annual report.

Comment:

Several commenters suggested that Customs require companies claiming a distribution of the offset under an order or finding to limit their claims only to those qualifying expenditures that are associated with the product that is the subject of the order or finding.

Customs Response:

Customs agrees. The statute (19 U.S.C. 1675c(b)(1)(B)) mandates that an affected domestic producer produce the product that is covered by an order or finding under which the offset is sought. Accordingly, there is a corresponding statutory limitation upon those qualifying expenditures that may lawfully be claimed as an offset under the order or finding. Consequently, qualifying expenditures on which a distribution may be claimed under section 1675c(b)(4) are limited only to those ex-

penditures that can be related to the production of the product that is covered by the scope of the order or finding.

It is Customs position that any other interpretation would only result in absurd consequences. The lack of a like product limitation would discriminate against producers who do not manufacture multiple, disparate products, such as steel and petroleum products. Those producers who make multiple products would be able to claim all their expenditures on facilities and equipment, even if those expenses had little or no connection with the manufacture of the particular product involved in an order or finding. This would potentially reduce funds available for non-diversified producers. There would also be a substantial administrative problem for Customs if there were orders or findings on more than one product in a company's line of merchandise.

In this latter regard, one example would be an affected domestic producer who manufactures five different products, each of which is the subject of a separate antidumping/countervailing duty order or finding, and who incurs $1 million in qualifying expenditures. Of the $1 million in qualifying expenditures, $600,000 is related to the production of just one product, and $100,000 incurred during the production of each of the other four products. In the absence of a same product requirement, the affected domestic producer could simply claim $1 million for each certification. However, Customs would not be able to match the $1 million in claimed expenses with any one of the five special accounts and would therefore have no reasonable basis for apportioning distributions from those accounts.

Proposed §§ 159.61(c) and 159.63(d) are amended in the final rule to reflect this additional limitation upon qualifying expenditures.

NOTICE OF DISTRIBUTION; CONTENT

Comment:

Several commenters proposed that Customs make information available concerning the dollar amounts in the special accounts for an order or finding prior to requiring companies to file certifications.

Customs Response:

Customs agrees. In future notices of intention to distribute the offset under § 159.62 for a given fiscal year, Customs will publish the dollar amount in the special account for each order or finding as of June 1 of that fiscal year. Of course, the final amount to be disbursed will differ, but the published amount may serve as an estimate for purposes of determining whether to file a certification for that fiscal year. Proposed § 159.62(b) is changed in the final rule to provide for this.

CONTENT AND SUFFICIENCY OF CERTIFICATIONS

Comment:

Several commenters proposed changing the signing official for the certifications to a lower-level employee, rather than a party legally authorized to bind the affected domestic producer, as required in proposed § 159.63(b).

Customs Response:

Customs disagrees. The person signing the certification must be authorized to legally bind the domestic producer. Enforcement actions may be taken against individuals and companies who file false information with Customs.

Comment:

One commenter requested that domestic producers be expressly permitted in proposed § 159.63(b)(2) to file claims for partial amounts.

Customs Response:

Customs does not believe such a provision needs to be expressly set forth in the regulations. The important point is that any amounts certified by a claimant for distribution must be supported by business records that must be retained for possible Customs verification, as previously noted. If other qualifying expenditures become verified at a later date, those can be included in subsequent certifications to claim a distribution.

Comment:

Several commenters requested clarification whether a company that is listed as an affected domestic producer on more than one order or finding may file a separate certification claiming a distribution, respectively, for each order or finding, using the same qualifying expenditures as the basis for distribution in each case. One commenter expressed a concern that Customs might overpay a claimant if a company may file multiple certifications in this way.

Customs Response:

When the same product is covered by orders or findings for more than one country, an individual company that is listed for each of those cases must file the same dollar claim for each case, since qualifying expenditures are not associated with a specific country case. Consequently, in order to avoid the possibility of an overpayment in these circumstances, Customs will require each certification to list all other orders or findings where the company is claiming the same qualifying expenditures. This requirement is included in § 159.63(b)(3)(ii) in the final rule. However, as previously observed, those companies that have multiple orders on different products may not claim the same expenditures for all cases. The expenditures claimed must relate to the product covered by the order or finding for which an offset is being claimed.

Comment:

Several commenters suggested that the certifications should require an additional statement specifying exactly how a party meets the requirements in the statute for filing a certification.

Customs Response:

Customs disagrees. Proposed § 159.63(b)(3) already adequately addresses the requirements concerning those parties that would be entitled to file certifications.

It is also noted that, due to the addition of paragraphs (b)(3)(i) and (b)(3)(ii) to § 159.63 in the final rule, as indicated above, it has been decided, for editorial clarity, to reorganize paragraph (b)(3) of proposed § 159.63 in the final rule as paragraphs (b)(3), and (b)(3)(i)–(b)(3)(iii).

CORRECTION OF CERTIFICATIONS

Comment:

Many commenters suggested that Customs not reject certifications for minor errors or omissions. They also proposed a correction period for claimants to perfect their certifications.

Customs Response:

Customs agrees. Parties listed in notices of intention to distribute must file their certifications within 60 days after publication of the notice, as already provided in proposed § 159.63(a). However, Customs will then have 15 days after the close of the 60-day filing period to return a certification that is found to be materially incorrect or incomplete. Within 10 days of the date that Customs returns a certification as being materially incorrect or incomplete, Customs must receive a corrected certification from the affected domestic producer. Customs will make every effort to assist companies to perfect their certifications and will not return claims for minor errors or omissions. Proposed § 159.63(c) is revised in the final rule to include these additional provisions regarding the processing of incorrect or incomplete certifications. Nevertheless, claimants should be mindful that it remains their responsibility to meet the requirements of the regulations for filing proper certifications.

Furthermore, in an effort to provide greater notice to domestic producers of Customs intent to distribute the offset, and thus enable the earlier filing of certifications, future notices of distribution will be published at least 90 days before the end of a fiscal year, as opposed to 60 days. Proposed § 159.62(a) is amended in the final rule to this effect.

VERIFICATION OF CERTIFICATIONS

Comment:

One commenter suggested, with reference to proposed § 159.63(d), that Customs verify every certification. Another commenter recommended a 5-year retention requirement for records needed to support claims for distribution, rather than the 3-year period contained in proposed § 159.63(d).

Customs Response:

A number of certifications may be selected to determine whether, and to what extent, verifications will be conducted.

However, Customs agrees with the recommendation for a 5-year record retention requirement, and proposed § 159.63(d) is changed in the final rule to provide for this. This accords with the general record retention provision of 5 years that is set forth in § 163.4(a), Customs Regulations (19 CFR 163.4(a)).

DISCLOSURE TO PUBLIC OF CERTAIN INFORMATION CONTAINED IN CERTIFICATIONS

Comment:

With respect to the information contained in the certifications described in proposed § 159.63, over 20 comments were received on the question of whether certain information required to be set forth in the certifications should be made public on a company-specific basis. The comments were equally divided over whether the company name and the dollar amounts claimed for an offset should be made public.

Customs Response:

As stated in the proposed rule, Customs was especially interested in receiving public comment as to whether it should adopt the position that the name of the certifying producer and the total amount being certified for distribution should be considered information available for disclosure to the public.

Customs has concluded that the name of the claimant, the total dollar amount claimed by that party on the certification, as well as the total dollar amount that Customs actually disburses to that company as an offset, will be available for disclosure to the public. Customs has determined that this information does not qualify as business confidential information. Proposed § 159.63 is changed in the final rule by adding paragraph (e) to state that the submission of a certification by an affected domestic producer will be construed as an understanding on the part of the affected domestic producer that the foregoing information will be disclosed to the public. Alternatively, a statement in a certification that this information is proprietary and exempt from disclosure will result in Customs rejection of the certification.

Accordingly, as part of the annual report on the Continued Dumping and Subsidy Offset Act (CDSOA), Customs will publish the following by case number: the name of the claimant; the total dollar amount claimed by that party on the certification; and the total dollar amount disbursed to that company by Customs. Proposed § 159.64(g), which concerns the issuance of the annual report, is amended in the final rule to provide for this disclosure of information.

RECOMMENDED CONDITIONS/RESTRICTIONS ON DISBURSEMENTS

Comment:

One commenter suggested that Customs prescribe how domestic producers may spend the disbursements that they receive under proposed § 159.64.

Customs Response:

Customs disagrees. There is no statutory requirement as to how a disbursement to an affected domestic producer is to be spent, and, absent statutory authority, Customs may not impose such a requirement.

Comment:

One commenter suggested that Customs deduct its administrative costs associated with the program from the offset to be distributed prior to making any disbursements.

Customs Response:

Customs disagrees. There is no provision in the statute to allow for such a deduction.

Comment:

Two commenters recommended that the disbursements to companies in an industry be reduced by the amount of other Government aid provided to that industry via other programs.

Customs Response:

Customs disagrees. Again, there is no provision in the statute to allow for such a reduction. Thus, Customs has no authority to reduce the amount of the offset payable to affected domestic producers under the statute, based upon aid provided to such producers through other Government programs.

REFUNDS TO IMPORTERS; RECOVERY OF OVERPAYMENTS TO DOMESTIC PRODUCERS

Comment:

One commenter requested, in connection with proposed § 159.64(b), that a domestic producer furnish Customs with a surety bond in order to guarantee that any overpayment of assessed duties to the producer would be repaid in the event that a subsequent reliquidation results in a lesser amount of duties being assessed.

Customs Response:

Customs disagrees. At this time, it does not appear to be practical or necessary to require domestic producers to file a surety bond to cover the amount of an annual distribution.

Comment:

Two commenters expressed concern that administration of the CDSOA under proposed § 159.64(b)(2) would delay the processing of refunds to importers in the case of reliquidations and/or court action. The concern was that Customs would hold up action on a refund request until it had received repayment of the overpaid disbursement from the domestic producers.

Customs Response:

Customs will not withhold action on refund claims based on the recovery of overpaid disbursements. Customs will establish procedures to compute the overpaid amounts to be recovered from domestic producers, so that recovery of the overpayment can be made, but those recoveries will take place independent of the refund of duties to importers. Customs already has authority under 19 U.S.C. 1520(a) to refund excess

duties paid, and the necessary monies to make such refunds are authorized to be appropriated annually from the general fund of the Treasury.

Proposed § 159.64(b)(2) is revised in the final rule to include the assurance that refunds to importers will not be delayed pending the recovery of overpayments to domestic producers.

Comment:

One commenter asserted that Customs had no authority to require repayment of an offset in proposed § 159.64(b)(3) when Customs had overpaid the offset due to an error in liquidation of an import entry.

Customs Response:

The ability to recover potential overpayments of disbursed duties due to the re-liquidation of import entries is a central feature of issuing disbursements. If Customs were unable to collect overpayments of disbursed duties due to import entry re-liquidations, Customs would simply have to delay all disbursements until the time for re-liquidation of the relevant import entries had passed, thereby precluding the possibility of overpayments due to reliquidations. Under this latter scenario, for example, disbursements for entries liquidated in Fiscal Year 2001 would not take place until November of 2002 if Customs did not have a mechanism in place to recover potential overpayments. With this mechanism in place, Customs anticipates completing distributions by the end of November 2001.

UNCLAIMED OFFSET NOT AVAILABLE FOR FUTURE DISTRIBUTION

Comment:

Many commenters stated that assessed duties remaining unclaimed after an annual distribution has occurred should not be deposited into the General Fund, as required under proposed § 159.64(c)(1), but should be available for future distributions to affected domestic producers.

Customs Response:

Customs disagrees. In Customs view, sections 1675c(c) and (d)(3) of the statute clearly require disbursement of liquidated duties in each fiscal year, based on certifications timely filed for that year's assessments. There is no provision for disbursing duties collected in one fiscal year based on claims that may be filed two or three years later simply because there was a previous unclaimed balance. The CDSOA provides that "[s]uch distribution shall be made not later than 60 days after the first day of a fiscal year from duties assessed during the preceding fiscal year." 19 U.S.C. 1675c(c).

However, the part of proposed § 159.64(c)(1) that dealt with the transfer of balances to different accounts has been deleted from this section in the final rule. Since that information only concerns internal Customs processing, it is not necessary to be included in the regulations.

Proposed § 159.64(c)(1) is changed in the final rule accordingly; and proposed § 159.64(b)(2) and (b)(3) is changed consistent with § 159.64(c)(1).

REQUESTS FOR RECONSIDERATION OF A DISBURSEMENT

Comment:

In cases where a distribution to an affected domestic producer was not for the entire amount certified, a number of commenters proposed that the time limit within which an affected domestic producer could request a reconsideration of the amount of the distribution be extended beyond the 10 business-day time limit set forth in proposed § 159.64(c)(3).

Customs Response:

Customs agrees. Parties will have 30 calendar days, rather than 10 business days, to request reconsideration of a disbursement. Proposed § 159.64(c)(3) is revised in the final rule to include this requirement.

TERMINATION OF ORDERS OR FINDINGS

Comment:

A number of commenters requested clarification of Customs actions when an order or finding has been terminated by the U.S. Department of Commerce (Commerce).

Customs Response:

When an order or finding is terminated by the Department of Commerce, Customs will work with Commerce to determine the extent of unliquidated entries covered by the case. If, for example, there is more than one Commerce review period pending at the time of termination, and Commerce only issues liquidation instructions for one of the pending review periods, Customs will process the entries covered by the instructions as an annual disbursement. The delayed disbursement referred to in § 159.64(d)(2) is limited to the final distribution when the special account established under the order or finding is terminated.

INTEREST

Comment:

Some commenters suggested, with reference to proposed § 159.64(e), that the Clearing Account and the Special Account that Customs establishes under the CDSOA should be interest-bearing accounts.

Customs Response:

Customs disagrees. Briefly, as previously explained in the notice of proposed rulemaking, funds in Government accounts are not interest-bearing unless specified by Congress. Because Congress did not make an explicit provision for the accounts established under the CDSOA to be interest-bearing, no interest may accrue on these accounts. Thus, only interest charged on antidumping and countervailing duty funds themselves, pursuant to the express authority in 19 U.S.C. 1677g, will

be transferred to the special accounts and be made available for distribution under the CDSOA.

Comment:

A number of commenters wanted to know about the interest that Customs pays when antidumping or countervailing duty deposits exceed the final assessed duty amount. These commenters asked if this interest would have any effect on the amount of the offset for an order or finding.

Customs Response:

Interest paid by Customs when deposits exceed the amount of the duties assessed will not be taken from either the clearing account or the special account. It is not a part of, and therefore does not reduce, the computation of the continued dumping and subsidy offset for an order or finding that would be distributed to affected domestic producers.

ANNUAL REPORT; CONTENT; CERTAIN GENERAL INFORMATION

Comment:

A number of commenters suggested that the annual report also contain the following general information for each order or finding: information regarding the number of entries and dollar amounts in the clearing account at the beginning of each fiscal year; the number and amount of Customs reliquidations during the fiscal year; and the dollar amounts remaining uncollected from Customs bills issued during the fiscal year.

Customs Response:

Customs agrees that the annual report should include this information as well. Proposed § 159.64(g) is further revised in the final rule to make reference to the inclusion of this additional information in the annual report for public disclosure. Also, in its annual report, Customs will address any initiatives that have been implemented to improve the liquidation and disbursement process under the CDSOA.

MISCELLANEOUS ISSUES RAISED

Comment:

Several commenters objected to the CDSOA as violating the World Trade Organization (WTO) agreements on Dumping and Subsidies and the North American Free Trade Agreement (NAFTA).

Customs Response:

These comments concern the statute and not the regulations and, accordingly, fall outside the scope of this rulemaking.

Comment:

One commenter requested a public hearing. Another commenter requested an extension of the period for filing comments.

Customs Response:

Customs finds that the process of informal rulemaking in accordance with the Administrative Procedure Act (5 U.S.C. 553) conducted in this

matter was sufficient. The comments received during the proposed rulemaking comment period fairly and adequately addressed the issues that were presented by the proposed rule, and Customs fully considered all views that were contained in the comments in issuing this final rule document. Neither a public hearing nor an extension of the comment period is necessary in this case.

Comment:

Several commenters suggested the term "assessment" be defined.

Customs Response:

Customs disagrees. As explained in the notice of proposed rulemaking, the assessment of duties on an import entry is accomplished by liquidating the subject entry; and, in pertinent part, the term "liquidation" is already defined in § 159.1, Customs Regulations (19 CFR 159.1), as the final computation or ascertainment of the duties accruing on an entry.

Comment:

There were a few comments requesting a clarification of the pro rata allocation of the offset to affected domestic producers that is required under the statute (19 U.S.C. 1675c(d)(3)).

Customs Response:

Customs believes that proposed § 159.64(c)(2), which addresses this issue, is clear and that no further clarification is necessary. Specifically, where the certified net claims exceed the offset available in a special account, the offset will be distributed on a pro rata basis based on each affected domestic producer's total certified claim. For example, on an individual case with only two claimants, if only $1 million is available for disbursement, where Company A claims total qualifying expenditures of $80 million, and Company B claims total qualifying expenditures of $20 million, Company A would receive $800,000 and Company B would receive $200,000. For those parties filing multiple certifications when there is more than one country case for a specific product, Customs will establish internal controls to prevent payments to affected domestic producers in excess of the amounts claimed.

Comment:

One commenter suggested that the regulations specify that Customs decisions in administering the statute are subject to judicial review by the U.S. Court of International Trade (USCIT).

Customs Response:

Customs disagrees. The CDSOA does not specify which particular federal court would have jurisdiction to review disputes regarding Customs decisions in administering the statute, and Customs lacks authority to confer jurisdiction on a particular court through its regulations.

ADDITIONAL CHANGES

Paragraph (b) of proposed § 159.63 is revised to include a requirement that the certification include a statement that the domestic pro-

ducer has records to support the qualifying expenditures being claimed. Also, paragraph (b)(1)(vi) of proposed § 159.63, allowing for the distribution of an offset via Electronic Funds Transfer (EFT), is deleted since Customs has not made any provision for the electronic payment of the offset. Furthermore, proposed § 159.64(e) is revised in the final rule to reflect that statutory interest charged on antidumping and countervailing duties at liquidation will be transferred only to the special account for the related order or finding, when such interest is collected from the importer.

CONCLUSION

After careful consideration of the comments received and further review of the matter, Customs has concluded that the proposed amendments should be adopted with the modifications discussed above.

INAPPLICABILITY OF DELAYED EFFECTIVE DATE OF FINAL RULE DOCUMENT

Customs finds that good cause exists under 5 U.S.C. 553(d)(3) for dispensing with a delayed effective date for this final rule. The final rule will instead be effective upon its date of publication in the Federal Register. Customs finds that it would be contrary to the public interest to delay distributions that affected domestic producers are entitled to under the statute. Moreover, dispensing with a delayed effective date is necessary in order to ensure that Customs is able to timely comply with the statutory requirement that assessed duties received in Fiscal Year 2001 be distributed to affected domestic producers by November 30, 2001 as provided in 19 U.S.C. 1675c(c).

REGULATORY FLEXIBILITY ACT AND EXECUTIVE ORDER 12866

The amendments implement the terms and conditions of the Continued Dumping and Subsidy Offset Act of 2000, which applies to antidumping and countervailing duties assessed on or after October 1, 2000. The amendments are necessary in order to enable and expedite the distribution of the offset to affected domestic producers. For these reasons, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.),* it is certified that these amendments do not have a significant economic impact on a substantial number of small entities. Nor do the amendments meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

PAPERWORK REDUCTION ACT

The collection of information in this final rule document was submitted for review and has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under OMB control number 1515–0229. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

This collection of information is contained in § 159.63. This information is necessary in order to enable, and to expedite, the distribution of

the continued dumping and subsidy offset to the affected domestic producers. The likely respondents and/or recordkeepers are domestic business organizations, such as manufacturers, producers, ranchers, farmers and worker representatives (including associations of such persons). The estimated average annual burden associated with this information collection is 40 hours per respondent or recordkeeper.

Comments on the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503. A copy should also be sent to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, D.C. 20229.

Part 178, Customs Regulations (19 CFR part 178), containing the list of approved information collections, is revised to reflect the additional information collection burden imposed under this final rule.

List of Subjects

19 CFR Part 159

Antidumping (Liquidation of duties), Countervailing duties (Liquidation of duties), Customs duties and inspection, Liquidation of entries for merchandise.

19 CFR Part 178

Administrative practice and procedure, Collections of information, Imports, Paperwork requirements, Reporting and recordkeeping requirements.

Amendments to the Regulations

Parts159 and 178, Customs Regulations (19 CFR parts 159 and 178), are amended as set forth below.

PART 159—LIQUIDATION OF DUTIES

1. The authority citation for part 159 is amended by adding an authority citation for Subpart F so as to read, in part, as follows:

Authority: 19 U.S.C. 66, 1500, 1504, 1624. Subpart C also issued under 31 U.S.C. 5151. Subpart F also issued under 19 U.S.C. 1675c.

* * * * * * *

2. Part 159 is amended by adding a new subpart F to read as follows:

Subpart F—Continued Dumping and Subsidy Offset

Sec.

§ 159.61 General.
§ 159.62 Notice of distribution.
§ 159.63 Certifications.
§ 159.64 Distribution of offset.

SUBPART F—CONTINUED DUMPING AND SUBSIDY OFFSET

§ 159.61 General.

(a) *Continued dumping and subsidy offset.* Under section 754 of the Tariff Act of 1930, as amended by Public Law 106–387, 114 Stat. 1549 (19 U.S.C. 1675c), known as the Continued Dumping and Subsidy Offset Act of 2000, assessed duties received on or after October 1, 2000 under a countervailing duty order, an antidumping duty order, or a finding under the Antidumping Act of 1921, will be distributed, as provided under this subpart, to affected domestic producers for certain qualifying expenditures that these affected domestic producers incur after the issuance of such an antidumping duty order or finding, or countervailing duty order. This distribution is called the continued dumping and subsidy offset.

(b) *Affected domestic producer.* (1) *General rule.* Except as provided in paragraph (b)(2) of this section, an "affected domestic producer" under paragraph (a) of this section means any manufacturer, producer, farmer, rancher or worker representative (including any association of such persons) that remains in operation continuing to produce the product covered by the antidumping duty order or finding or countervailing duty order, and that was a petitioner or an interested party that supported a petition concerning an antidumping duty order, a finding under the Antidumping Act of 1921, or a countervailing duty order that was entered. It is the responsibility of the U.S. International Trade Commission (USITC) to ascertain and timely forward to Customs a list of the domestic producers potentially considered "affected domestic producers" eligible to receive a distribution in connection with each order or finding. In addition to the potential "affected domestic producers" set forth on the USITC list, the following parties also are potential "affected domestic producers":

(i) *Successor company.* In the case of a company that has succeeded to the operations of a predecessor company that appeared on the USITC list, the successor company may file a certification to claim an offset as an affected domestic producer on behalf of the predecessor company. In its certification, the company must name the predecessor company to which it has succeeded and it must describe in detail the duly authorized succession by which it is entitled to file the certification.

(ii) *A member company of an association.* A member company of an association appearing on the USITC list for an order or finding may file a certification to claim an offset as an affected domestic producer, even though the member company does not itself appear on the USITC list, provided that the company also meets the other requirements of the statute. In its certification, the company must name the association of which it is a member and the company must specifically establish that it was a member of the association at the time the association filed the petition with the USITC.

(2) *Exceptions.* A party who is named on the USITC list is not an "affected domestic producer" under the following circumstances:

(i) *Product no longer produced.* A company, business or person that has ceased production of the product covered by the antidumping duty order or finding, or countervailing duty order, *i.e.*, did not manufacture that product at all during the fiscal year that is the subject of the disbursement, is not an affected domestic producer under this section.

(ii) *Acquisition by related company.* (A) *Related company defined.* A company, business or person is not an affected domestic producer if that company, business, or person has been acquired by another company or business that is related to a company that opposed the antidumping or countervailing duty investigation that led to the order or finding. For purposes of this paragraph, a company, business or person is related to another company, business or person if:

(*1*) The company, business or person directly or indirectly controls or is controlled by the other company, business or person;

(*2*) A third party directly or indirectly controls both companies, businesses or persons; or

(*3*) Both companies, businesses or persons directly or indirectly control a third party and there is reason to believe that the relationship causes the first company, business or person to act differently than a nonrelated party.

(B) *Control of one party by another.* For purposes of paragraphs (b)(2)(ii)(A)(*1*) through (b)(2)(ii)(A)(*3*) of this section, one party would be considered to directly or indirectly control another party if the party was legally or operationally in a position to exercise restraint or direction over the other party.

(c) *Qualifying expenditures.* Qualifying expenditures which may be offset by a distribution of assessed antidumping and countervailing duties must fall within the categories described in paragraphs (c)(1) through (c)(10) of this section. These expenditures must be incurred after the issuance, and prior to the termination, of the antidumping duty order or finding or countervailing duty order under which the distribution is sought. Further, these expenditures must be related to the production of the same product that is the subject of the related order or finding, with the exception of expenses incurred by associations which must relate to a specific case.

(1) Manufacturing facilities;
(2) Equipment;
(3) Research and development;
(4) Personnel training;
(5) Acquisition of technology;
(6) Health care benefits for employees paid for by the employer;
(7) Pension benefits for employees paid for by the employer;
(8) Environmental equipment, training, or technology;
(9) Acquisition of raw materials and other inputs; and
(10) Working capital or other funds needed to maintain production.

§ 159.62 Notice of distribution.

(a) *Publication of notice.* At least 90 days before the end of a fiscal year, Customs will publish in the Federal Register a notice of intention to distribute assessed duties received as the continued dumping and subsidy offset for that fiscal year. The notice will include the list of domestic producers, based upon the list supplied by the USITC (see § 159.61(b)(1)), that would be potentially eligible to receive the distribution.

(b) *Content of notice.* The notice of intention to distribute the offset will also contain the following:

(1) The case name and number of the particular order or finding concerned, together with the dollar amount contained in the special account for that order or finding as of June 1 of the subject fiscal year (see § 159.64(a)(1)); and

(2) The instructions for filing the certification under § 159.63 in order to claim a distribution.

§ 159.63 Certifications.

(a) *Requirement and purpose for certification.* In order to obtain a distribution of the offset, each affected domestic producer must submit a certification, in triplicate, or electronically as authorized by Customs, to the Assistant Commissioner, Office of Regulations and Rulings, Headquarters, or designee, that must be received within 60 days after the date of publication of the notice in the Federal Register, indicating that the affected domestic producer desires to receive a distribution. The certification must enumerate the qualifying expenditures incurred by the domestic producer since the issuance of an order or finding for which a distribution has not previously been made, and it must demonstrate that the domestic producer is eligible to receive a distribution as an affected domestic producer.

(b) *Content of certification.* While there is no established format for a certification, the certification must identify the date of the Federal Register notice under which it is submitted, and the case name and the number of the particular order or finding cited in the Federal Register notice. The certification must be executed and dated by a party legally authorized to bind the domestic producer. The certification must also state that the information contained in the certification is true and accurate to the best of the certifier's knowledge and belief under penalty of law, and that the domestic producer has records to support the qualifying expenditures being claimed.

(1) *Identifying information for domestic producer.* The certification must include the following identifying information related to the domestic producer:

(i) The name of the domestic producer and any name qualifier, if applicable (for example, any other name under which the domestic producer does business or is also known);

(ii) The address of the domestic producer (if a post office box, the secondary street address must also be included);

(iii) The Internal Revenue Service (IRS) number (with suffix) of the domestic producer, employer identification number, or social security number, as applicable;

(iv) The specific business organization of the domestic producer (corporation, partnership, sole proprietorship); and

(v) The name(s) of any individual(s) designated by the domestic producer as the contact person(s) concerning the certification, together with the phone number(s) and/or facsimile transmission number(s) and electronic mail (email) address(es) for the person(s).

(2) *Amount of claim.* In calculating the amount of the distribution being claimed as an offset, the certification must enumerate the following:

(i) The total amount of qualifying expenditures currently and previously certified by the domestic producer, and the amount certified by category (see § 159.61(c)(1) through (c)(10));

(ii) The total amount of those expenditures which have been the subject of any prior distribution under section 754, Tariff Act of 1930, as amended (19 U.S.C. 1675c); and

(iii) The net amount for new and remaining qualifying expenditures being claimed in the current certification (the total amount currently and previously certified as noted in paragraph (b)(2)(i) of this section minus the total amount the subject of any prior distribution as noted in paragraph (b)(2)(ii) of this section).

(3) *Statement of eligibility to receive distribution.* The certification must contain a statement that the domestic producer desires to receive a distribution and is eligible to receive the distribution as an affected domestic producer (see § 159.61(b)(1) and (b)(2)).

(i) *Amount certified for payment.* The affected domestic producer must affirm that the net amount certified for distribution does not encompass any qualifying expenditures for which distribution has previously been made (see paragraphs (b)(2)(ii) and (b)(2)(iii) of this section).

(ii) *Same qualifying expenditures included on more than one certification.* Where the domestic producer is listed as an affected domestic producer on more than one order or finding covering the same product and files a separate certification for each order or finding using the same qualifying expenditures as the basis for distribution in each case, each certification must list all the other orders or findings where the producer is claiming the same qualifying expenditures.

(iii) *Continued production of product covered by order or finding; acquisition by related company.* The statement must include information as to whether the domestic producer remains in operation and continues to produce the product covered by the particular order or finding under which the distribution is sought (see § 159.61(b)(2)(i)). In addition, the domestic producer must state whether it has been acquired by a company or business that is related to a company, within the meaning of § 159.61(b)(2)(ii)(A)(*1*) through (*3*), that opposed the antidumping or

countervailing duty investigation that resulted in the order or finding under which the distribution is sought.

(c) *Review and correction of certification.* A certification that is submitted in response to a notice of distribution and received within 60 days after the date of publication of the notice in the Federal Register may be reviewed before acceptance to ensure that all informational requirements are complied with and that any amounts set forth in the certification for current and prior qualifying expenditures, including the amount claimed for distribution, appear to be correct (see paragraph (b)(2) of this section). A certification that is found to be materially incorrect or incomplete will be returned to the domestic producer within 15 days after the close of the 60-day filing period. Within 10 days of the date that Customs returns a certification as being materially incorrect or incomplete, Customs must receive a corrected certification from the affected domestic producer. Customs will make every effort to assist companies to perfect their certifications and will not return claims for minor errors or omissions. However, it remains the sole responsibility of the domestic producer to ensure that the certification is correct, complete and satisfactory so as to demonstrate the entitlement of the domestic producer to the distribution requested. Failure to ensure that the certification is correct, complete and satisfactory as provided in this paragraph will result in the domestic producer not receiving a distribution.

(d) *Verification of certification; supporting records.* Certifications are subject to verification. Parties, therefore, are required to maintain the accounting records used in developing their claims, for a period of five years after the filing of the certification. The records supporting certifications must be those that are normally kept in the ordinary course of business (see § 163.1(a)(1) and (a)(2)(vi) of this chapter). Parties must be able to demonstrate that their records specifically support each qualifying expenditure enumerated in a certification. In addition, the claimant must be able to support how qualifying expenditures are determined to be related to the production of the product covered by the order or finding.

(e) *Disclosure of information in certifications; acceptance by producer.* The name of the affected domestic producer, the total dollar amount claimed by that party on the certification, as well as the total dollar amount that Customs actually disburses to that company as an offset, will be available for disclosure to the public (see § 159.64(g)(1)). The submission of the certification will be construed as an understanding and acceptance on the part of the domestic producer that this information will be disclosed to the public. Alternatively, a statement in a certification that this information is proprietary and exempt from disclosure will result in Customs rejection of the certification.

§ 159.64 Distribution of offset.

(a) *The creation of Special Accounts and Clearing Accounts.*

(1) *Special Accounts.* As directed in the legislation (19 U.S.C. 1675c(e)), Customs will establish Special Accounts for each antidumping duty order or finding or countervailing duty order, into which funds will be transferred as set out in paragraph (b) of this section. All distributions to affected domestic producers will be made from the Special Accounts.

(2) *Clearing Accounts.* In order to properly manage and account for dumping and subsidy offsets, as well as any requisite refunds to importers, Customs will also establish Clearing Accounts. All estimated antidumping and countervailing duties received pursuant to an antidumping or countervailing order or finding in effect on January 1, 1999, or thereafter, will be deposited into a Clearing Account.

(b) *Distribution of assessed duties received from the Special Accounts; refunds resulting from reliquidation or court action; and overpayments to affected domestic producers.*

(1) *Distribution of assessed duties received from the Special Accounts.*

(i) No later than 60 days after the end of a fiscal year, Customs will distribute the assessed duties transferred from the Clearing Accounts and received into the Special Accounts. The amount distributed shall be referred to as the dumping and subsidy offset;

(ii) Transfers from the Clearing Accounts to the Special Accounts will be made by Customs throughout the fiscal year. Transfers will occur between a Clearing Account and a Special Fund Account when an entry upon which antidumping or countervailing duties are owed is properly liquidated pursuant to an order, finding or receipt of liquidation instructions;

(iii) The amount transferred at liquidation to the Special Account will be dependent upon the amount actually collected on the entry and in the Clearing Account. Following liquidation, additional transfers will be made on the liquidated entry to the corresponding Special Account, as additional antidumping or countervailing duties are collected.

(2) *Refunds resulting from reliquidation or court action.* If any of the underlying entries composing a prior distribution should reliquidate for a refund, such refund will be recovered from the corresponding Special Account. Similarly, refunds to importers resulting from any court action involving those entries will also be recovered from the corresponding Special Account. Refunds to importers will not be delayed pending the recovery of overpayments from domestic producers as set out in paragraph (b)(3) of this section.

(3) *Overpayments to affected domestic producers.* Overpayments to affected domestic producers resulting from subsequent reliquidations and/or court actions and determined by Customs to be not otherwise recoverable from the corresponding Special Account as set out in paragraph (b)(2) of this section will be collected from the affected domestic producers. The amount of each affected domestic producer's bill will be

directly proportional to the total dumping and subsidy offset amounts that the affected domestic producer previously received under the related Special Account. All available collection methods will be used by Customs to collect outstanding bills, including but not limited to, administrative offset. Interest at the same rate set out at § 24.3a(c) of this chapter will begin to accrue on unpaid bills 30 days from the bill date.

(c) *Payment of certified claims.*

(1) If the total amount of the certified net claims filed by affected domestic producers does not exceed the amount of the offset available for distribution in the corresponding Special Account, the certified net claim for each affected domestic producer will be paid in full.

(2) If the certified net claims exceed the dumping and subsidy offset amount available in the corresponding Special Account, such offset will be made on a pro rata basis based on each affected domestic producer's total certified claim.

(3) In any case where the distribution is not for the entire certified qualifying expenditure submitted by an affected domestic producer, and if the affected domestic producer believes that the reduction was the result of clerical error or mistake by Customs, it must file a request for reconsideration within 30 calendar days to the address given in the notification. After considering the matter, the Customs Service will notify the party requesting reconsideration of its decision. However, any adjustments will be made only from funds remaining in the account for that case in the current or future fiscal years, and will be paid prior to any future distributions.

(d) *Final distribution and termination of the Special Account.*

(1) A Special Account will be terminated and a final distribution will occur when:

(i) The order or finding with respect to which the account was established has terminated; and

(ii) All entries relating to the order or finding are liquidated, all outstanding amounts collected or properly accounted for by Customs, all related protests, petitions, and court actions fully concluded, and all refunds due to importers on the underlying entries are paid in full.

(2) Once the requirements set out in paragraph (d)(1) of this section have been met, notice of a final distribution will be issued pursuant to § 159.62.

(3) Amounts not timely claimed under the notice of final distribution will be permanently deposited into the General Fund of the Treasury.

(e) *Interest on Special Accounts and Clearing Accounts.* In accordance with Federal appropriations law, and Treasury guidelines on Special Accounts, funds in such accounts are not interest-bearing unless specified by Congress. Likewise, funds being held in Clearing Accounts are not interest-bearing unless specified by Congress. Therefore, no interest will accrue in these accounts. However, statutory interest charged on antidumping and countervailing duties at liquidation will be transferred to the Special Account, when collected from the importer.

(f) *Distribution final and conclusive.* Except as provided in paragraphs (b)(3) and (c)(3) of this section, any distribution made to an affected domestic producer under this section shall be final and conclusive on the affected domestic producer.

(g) *Annual report; disclosure of information.* Although it is not mandated in the law (19 U.S.C. 1675c), Customs will issue an annual report on the disbursements. This report will be available to the public via the Customs website. The annual report will address any initiatives that have been implemented to improve the liquidation and disbursement process. In addition, the annual report will include the information described in paragraphs (g)(1) and (g)(2) of this section.

(1) *Company-specific information.* The annual report will include the following information concerning those parties that have submitted certifications for a distribution of the offset with respect to each order or finding as identified by its case number:

(i) The name of the claimant;

(ii) The total dollar amount claimed by that party on its certification; and

(iii) The total dollar amount disbursed to that company by Customs.

(2) *General information.* The annual report will include the following general information for each order or finding as identified by its case number:

(i) The number of entries and dollar amounts in the clearing account at the beginning of each fiscal year;

(ii) The number and amount of Customs re-liquidations during the fiscal year; and

(iii) The dollar amounts remaining uncollected from Customs bills issued during the fiscal year.

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for part 178 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 *et seq.*

2. Section 178.2 is amended by adding a new listing in the table in appropriate numerical order to read as follows:

§ 178.2 Listing of OMB Control Numbers.

19 CFR Section	*Description*	*OMB Control No.*
* * *	* * *	*
§ 159.63	Distribution of continued dumping and subsidy offset to affected domestic producers	1515–0229
* * *	* * *	*

CHARLES W. WINWOOD,
Acting Commissioner of Customs.

Approved: September 17, 2001.
TIMOTHY E. SKUD,
Acting Deputy Assistant Secretary of the Treasury.

[Published in the Federal Register, September 21, 2001 (66 FR 48546)]

U.S. Customs Service

General Notices

FEES FOR CUSTOMS SERVICES AT USER FEE AIRPORTS

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: This document advises the public of an increase in the fees charged by Customs to user fee airports for providing Customs services at these designated facilities. The fees are based on the actual costs incurred by Customs in purchasing equipment and providing training and one Customs inspector on a full-time basis, and, thus, merely represent reimbursement to Customs for services rendered. The fees to be increased are the initial fee charged for a user fee airport's first year after it signs a Memorandum of Agreement with Customs to become a user fee airport, and the annual fee subsequently charged user fee airports.

EFFECTIVE DATE: The new fees will be effective October 1, 2001, and will be reflected in quarterly, user fee airport billings issued on or after that date.

FOR FURTHER INFORMATION CONTACT: Cynthia Sargent, Budget Division, Office of Finance, (202) 927–0609.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Section 236 of the Trade and Tariff Act of 1984 (Pub.L. 98–573, 98 Stat. 2992) (codified at 19 U.S.C. 58b), as amended, authorizes the Secretary of the Treasury to make Customs services available at certain specified airports and at any other airport, seaport, or other facility designated by the Secretary pursuant to specified criteria, and to charge a fee for providing such services. (The list of user fee airports is found at § 122.15 of the Customs Regulations (19 CFR 122.15).) The fee that is charged is in an amount equal to the expenses incurred by the Secretary in providing Customs services at the designated facility, which includes purchasing equipment and providing training and inspectional services, *i.e.*, the salary and expenses of individuals employed by the Secretary to provide the Customs services, and, thus, merely represents reimbursement to Customs for services rendered. The fees being raised

are the initial fee charged a user fee airport after it signs a Memorandum of Agreement with Customs so that it can begin operations (currently set at $ 117,600), and the annual fee subsequently charged so that user fee airports can continue to offer Customs services at their facilities (currently set at $ 84,500). The notice announcing the current user fee rates was published in the Federal Register on September 13, 2000 (65 FR 55327).

The user fees charged a user fee airport are typically set forth in a Memorandum of Agreement between the user fee facility and Customs. While the amount of these fees are agreed to be at flat rates, they are periodically adjusted, as costs and circumstances change.

ADJUSTMENT OF USER FEE AIRPORT FEES

Customs has determined that, in order for the user fee charged to actually reimburse Customs for expenses incurred in providing requested services, the initial fee must be increased from $ 117,600 to $ 118,000, and the recurring annual fee subsequently charged must be increased from $ 84,500 to $ 88,500. The new fees will be effective October 1, 2001, and will be reflected in quarterly, user fee airport billings issued on or after that date.

Dated: September 17, 2001.

WAYNE HAMILTON,
Assistant Commissioner,
Office of Finance.

[Published in the Federal Register, September 21, 2001 (66 FR 48739)]

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, September 19, 2001.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

DOUGLAS M. BROWNING,
Acting Assistant Commissioner,
Office of Regulations and Rulings.

MODIFICATION OF CUSTOMS RULING AND REVOCATION OF TREATMENT RELATING TO COUNTRY OF ORIGIN MARKING OF CANNED MUSHROOMS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of modification of a ruling letter and revocation of treatment pertaining to the country of origin marking of canned mushrooms.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying a ruling pertaining to the country of origin marking of canned mushrooms and revoking any treatment previously accorded by the Customs Service to substantially identical transactions that is contrary to the position set forth in this notice. Notice of the proposed action was published in the CUSTOMS BULLETIN of May 23, 2001, Volume 35, Number 21. No comments were received in response to this notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after December 3, 2001.

FOR FURTHER INFORMATION CONTACT: Burton L. Schlissel, Special Classification and Marking Branch, (202) 927–1034.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L.

103–82, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. §1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to Customs obligations, a notice of proposed modification of New York Ruling Letter (NY) G86203 dated January 16, 2001, was published in the CUSTOMS BULLETIN of May 23, 2001, Volume 35, Number 21. No comments were received in response to this notice.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying a ruling letter pertaining to the country of origin marking of canned mushrooms. Although in this notice Customs is specifically referring to NY G86203 dated January 16, 2001, this notice covers any rulings pertaining to this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. Any party who has received an interpretative ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should have advised Customs during that notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should have advised Customs during that notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reason-

able care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

In NY G86203, Customs considered the country of origin marking of canned mushrooms which were packed on shrink-wrapped skids. In that case, Customs determined that the ultimate purchaser of the mushrooms was the importer's customer in the U.S. who used the mushrooms to produce soups, gravies and other food products. Consequently, pursuant to section 134.35(a), Customs Regulations (19 CFR 134.35(a)), the imported article was excepted from the marking requirements and only the outermost container was required to be marked. Customs also held that the cans, which reach the ultimate purchaser, were the outermost containers and accordingly they were required to be marked with the country of origin. Upon reconsideration, however, we find that the position taken in G86203, *supra*, regarding what constitutes the outermost container, is in error.

In HRL 559976 dated June 30, 1997, steel coils were packed onto skids. In that case, Customs held that the skid was the container of the steel coils and that pursuant to the exception provided under section 134.32(d), Customs Regulations (19 CFR 134.32(d)), marking of the skids would satisfy the country of origin marking requirements provided that the coils reached the ultimate purchaser in the U.S. on the skids. *See* also HRL 561828 dated October 20, 2000 (the outermost container of textile bags excepted from the individual marking requirements is the skid on which the bags are shipped to the ultimate purchaser).

Accordingly, pursuant to 19 U.S.C. 1625(c)(1), Customs is modifying HRL G86203, and any other ruling not specifically identified, to reflect this position, pursuant to the analysis set forth in Headquarters Ruling Letter 562077 (see "Attachment" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially similar transactions.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective sixty (60) days after its publication in the CUSTOMS BULLETIN.

Dated: September 14, 2001.

MYLES HARMON,
(for John Durant,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
Washington, DC, September 14, 2001.
MAR-05: RR:CR:SM 562077 BLS
Category: Marking

MR. KARL F. KRUEGER
DANZAS AEI CUSTOMS BROKERAGE SERVICES
29200 Northwestern Highway
Southfield, MI 48030

Re: Country of origin marking of canned mushrooms; reconsideration and modification of NY G86203; 134.35; outermost container.

DEAR MR. KRUEGER:

This is in response to your letter dated January 29 and fax of March 21, 2001, on behalf of Kanan Foods, Inc. ("Kanan"), requesting reconsideration of NY Ruling Letter G86203 dated January 16, 2001.

Facts:

Kanan imports canned mushrooms from India for use by their customer, Lipton Foods, Englewood Cliffs, New Jersey. The canned mushrooms are imported on skids and are shrink wrapped in plastic. Lipton will use the canned mushrooms as ingredients in soups, gravies, and similar food products. The manufacturing process utilized by Lipton includes opening the cans by machine and adding the mushrooms to other ingredients. In a letter dated December 20, 2000, Lipton advises that during this process, paper can labels could be dislodged, which would present a potential for product contamination. For this reason, Lipton requires that all canned products be provided without such labeling. Lipton also states that it is aware that the mushrooms supplied by Kanan are a product of India.

NY Ruling Letter G86203

In NY G86203, Customs found that the canned mushrooms undergo a substantial transformation as a result of the processing performed by Lipton in the U.S. and therefore the imported article is excepted from country of origin marking requirements. Customs also held that the cans which reach the ultimate purchaser (Lipton) are the outermost containers and thus are required to be marked with the country of origin. *See* 19 CFR 134.35.

In this request for reconsideration, Kanan contends that the outermost container, which must be marked with the country of origin, is the shrink-wrapped pallet, and that under these circumstances, the mushroom cans are not required to be marked.

Issue:

Whether, for purposes of 19 CFR 134.35, the "outermost container" of the imported good is the shrink-wrapped pallet.

Law And Analysis:

The marking statute, section 304, Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article. Part 134, Customs Regulations (19 CFR Part 134), implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304.

Section 134.1(b), Customs Regulations (19 C.F.R. §134.1(b)), defines "country of origin" as the country of manufacture, production or growth of any article of foreign origin entering the U.S. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the "country of origin" within the meaning of the marking laws and regulations. The case of *United States v. Gibson-Thomsen Co., Inc.*, 27 CCPA 267, C.A.D. 98 (1940), provides that an article used in manufacture in the U.S. which results in an article having a name, character or use differing from that of the imported constituent article will be considered substantially transformed. In such circumstances the U.S. manufacturer will be considered the ultimate purchaser. The imported article will be excepted from the marking requirements and only the outermost container is required to be marked. *See* 19 CFR §134.35(a).

In HRL 559976 dated June 30, 1997, steel coils were packed onto skids. In that case, Customs held that the skid was the container of the steel coils and that pursuant to the exception provided under section 134.32(d), Customs Regulations (19 CFR 134.32(d)), marking of the skids would satisfy the country of origin marking requirements provided that the coils reached the ultimate purchaser in the U.S. on the skids. *See* also HRL 561828 dated October 20, 2000 (marking the outermost container (skids) satisfies marking requirements where textile bags are excepted from individual marking).

Under the circumstances, it is Customs determination that the shrink-wrapped skid, which reaches the ultimate purchaser (Lipton), unopened is the outermost container.

Holding:

Pursuant to 19 CFR 134.35(a), the outermost container of the imported mushrooms is the shrink-wrapped pallet. Therefore, the marking requirements will be satisfied provided this container is properly marked with India as the country of origin and reaches Lipton in an unopened condition. NY G86203 is modified accordingly. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

MYLES HARMON,
(for John Durant, Director,
Commercial Rulings Division.)

PROPOSED REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF MECHANICAL TRANSFER PRESS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of ruling letter and treatment relating to tariff classification of mechanical transfer press.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling relating to the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of mechanical transfer presses, and to revoke any treatment Customs has previously accorded to substantially identical transactions. These are machine tools that utilize one or more dies that perform cutting and forming operations on metal to produce parts, in this case for air bag assemblies. Customs invites comments on the correctness of the proposed action.

DATE: Comments must be received on or before November 2, 2001.

ADDRESS: Written comments are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at the same location during regular business hours.

FOR FURTHER INFORMATION CONTACT: James A. Seal, Commercial Rulings Division (202) 927–0760.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **informed compliance** and **shared responsibility.** These concepts are based on the premise that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's rights and responsibilities under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484, Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and declare value on imported merchandise, and to provide other necessary information to enable Customs to properly assess duties, collect accurate statistics and determine whether any other legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke a ruling relating to the tariff classification of mechanical transfer presses. Although in this notice Customs is specifically referring to one ruling, *NY* 857696, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been identified. Any party who has received an interpretative ruling or decision (i.e., ruling letter, internal advice memorandum or decision, or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may

raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

In *NY* 857696, dated October 2, 1990, a mechanical transfer press was found to be classifiable in subheading 8462.99.00, HTSUS, a provision for other presses for working metal. This ruling was based on a classification methodology under the HTSUS predecessor tariff nomenclature, the Tariff Schedules of the United States (TSUS). *NY* 857696 is set forth as "Attachment A" to this document.

It is now Customs position that mechanical transfer presses are classifiable in subheading 8462.10.00, HTSUS, as die-stamping machines (including presses). Pursuant to 19 U.S.C. 1625(c)(1)), Customs intends to revoke *NY* 857696 and any other ruling not specifically identified to reflect the proper classification of mechanical transfer presses pursuant to the analysis in *HQ* 965247, which is set forth as "Attachment B" to this document. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment it previously accorded to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

Dated: September 14, 2001.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
New York, NY, November 8, 1990.

CLA84:S:N:N1:104) 857696
Category: Classification
Tariff No. 8462.99.0035

MS. KRISTINE M. NELSON
HARPER ROBINSON & CO.
411 E. Irving Park Road
Bensenville, IL 60106

Re: The tariff classification of a mechanical transfer press from Japan.

DEAR MS. NELSON:

This classification decision under the Harmonized Tariff Schedule of the United States (HTS) is being issued in accordance with the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

DATE OF INQUIRY:	October 2, 1990
ON BEHALF OF:	IHI, Inc.
DESCRIPTION OF MERCHANDISE:	The mechanical transfer press features a transfer feed unit that can be driven independently to permit feed rail connect/

	disconnect, finger adjustment and tryout. The unit also has an automatic quick die changing system.
HTS PROVISION:	Presses for working metal: Other: Mechanical transfer presses
HTS SUBHEADING:	8462.99.0035
RATE OF DUTY:	4.4 percent ad valorem
OTHER:	Mechanical transfer presses from Japan imported into the United States are subject to additional dumping duties.

A copy of this ruling should be attached to the entry documents filed at the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

JEAN F. MAGUIRE,
Area Director,
New York Seaport.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:GC 965247 JAS
Category: Classification
Tariff No. 8462.10.00

KRISTINE M. NELSON
HARPER, ROBINSON & CO.,
411 E. Irving Park Road
Bensenville, IL 60106

Re: *NY* 857696 Revoked; Mechanical Transfer Press.

DEAR MS. NELSON:

In *NY* 857696, which the then-Area Director of Customs, now the Director of Customs National Commodity Specialist Division, New York, issued to you on November 8, 1990, on behalf of IHI, Inc., a mechanical transfer press was found to be classifiable in a provision for other presses for working metal, in subheading 8462.99.00 (now 80), Harmonized Tariff Schedule of the United States (HTSUS). We have reconsidered this classification and now believe that it is incorrect.

Facts:

Mechanical transfer presses are machine tools which utilize tools called dies to produce stamped parts for a variety of automotive and industrial applications. In operation, sheet metal stock is moved by a transfer mechanism from station to station within the press where, by force or pressure, the dies perform combinations of cutting, forming, trimming and sizing operations as the part gradually takes shape.

The HTSUS provisions under consideration are as follows:

8462	Machine tools (including presses) for working metal by * * * die stamping: * * *:
8462.10.00	Forging or die-stamping machines (including presses) and hammers
* * * * * * *	
	Other:
8462.99	Other
8462.99.80	Other

Issue:

Whether mechanical transfer presses are die-stamping machines for tariff purposes.

Law and Analysis:

Under General Rule of Interpretation (GRI) 1, Harmonized Tariff Schedule of the United States (HTSUS), goods are to be classified according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitute the official interpretation of the Harmonized System at the international level. Though not dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS. Customs believes the ENs should always be consulted. *See* T.D. 89–80. 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

Where not defined in the legal text of the HTSUS, either in a section or chapter note, or clearly described in the ENs, a tariff term is construed in accordance with its common and commercial meanings, which are presumed to be the same. In technical areas, Customs places great emphasis on industry-specific lexicons in determining the common meaning of a term. These lexicons tend to define terms with greater specificity than do general purpose dictionaries. *See Brown-Boveri Corp. v. United States*, 55 CCPA 19, 23, C.A.D. 870 (1966), and cases cited. The Glossary of Mechanical Press Terms, published by the American Society of Mechanical Engineers (ASME) as American National Standard B5.49M (1984), defines *stamping* as:

> The end product of a press operation, or a series of operations, wherein a piece part is generated by processing flat (or perforated) strip or sheet stock between the opposing members of a die. During the operation(s), the material is subjected to pressure sufficient to cut the part, or form the part, or both, into the required configuration. A general tern used to describe the process, or the press operations, or both.

The ENs to heading 8462, on pp.1383 and 1384, indicate that stamping (or cutting out) is a process for forcing metal, by impact or pressure, to fill the hollows of metal moulds called dies. Generally, a press is used. Stamping machines can utilize special cutting dies to eliminate the flash produced during stamping or cutting out. The finishing operation carried out by a precision die-stamper is described as sizing, and produces the necessary precise dimensions. It is apparent that die-stamping presses are capable of numerous machining operations that produce finished parts. Transfer dies consist of a series of stamping dies that progressively form the part, usually starting with a drawing or forming operation, then trimming, piercing, flanging, etc. Multiple dies/stations are typically required to complete the stamping operations on a part, and they are usually contained in a single press. The available information leads us to conclude that multiple transfer presses are a type of die stamping machine and should be so classified.

Holding:

Under the authority of GRI 1, the mechanical transfer press the subject of *NY* 857696 is provided for in heading 8462. It is classifiable in subheading 8462.10.00, HTSUS, a provision for die-stamping machines (including presses). Accordingly, *NY* 857696 is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

PROPOSED REVOCATION OF RULING LETTERS AND TREATMENT RELATING TO CLASSIFICATION OF MILK PROTEIN CONCENTRATE

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of ruling letters and treatment relating to the classification of milk protein concentrate.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke three ruling letters pertaining to the tariff classification of milk protein concentrate and any treatment previously accorded by the Customs Service to substantially identical transactions. Comments are invited on the correctness of the intended action.

DATE: Comments must be received on or before November 2, 2001.

ADDRESS: Written comments are to be addressed to: U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue. N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address.

FOR FURTHER INFORMATION CONTACT: Peter T. Lynch, General Classification Branch, 202–927–1396.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. §1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of milk protein concentrate. Although in this notice Customs is specifically referring to three rulings, New York Ruling Letter (NY) 816940, dated December 6, 1995, NY B80989, dated January 16, 1997, and NY D83787, dated November 13, 1998, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise the Customs Service during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise the Customs Service of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or their agents for importations of merchandise subsequent to this notice.

In NY 816940, dated December 6, 1995, NY B80989, dated January 16, 1997, and NY D83787, dated November 13, 1998, the classification of a product commonly referred to as milk protein concentrate was determined to be in heading 0404.90.1000, HTSUS, which provides for whey, whether or not concentrated or containing added sugar or other sweetening matter; products consisting of natural milk constituents, whether or not containing added sugar or other sweetening matter, not elsewhere specified of included, other, milk protein concentrates. These ruling letters are set forth in Attachments "A" through "C" to this document. Since the issuance of those rulings, Customs has had a chance to review the classification of this merchandise and has determined that the classification set forth is in error.

It is now Customs position, because of their composition, that the milk protein concentrates described in these rulings are classified in subheading 0404.90.3000, HTSUS, which provides for diary products described in additional U.S. note 1 to chapter 4, further described in

additional U.S. note 10 to chapter and entered pursuant to its provisions.

Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to revoke NY 816940, NY B80989, and NY D83787, and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letters (HQ) 965212, 965213 and 965214, (*see* Attachments "D" through "F" this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: September 11, 2001.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
New York, NY, December 6, 1995.
CLA–2–04:RR:NC:FC:231 816940
Category: Classification
Tariff No. 0404.90.1000

MS. MICHELLE MANCIAS, ESQ.
SONNENBERG AND ANDERSON
200 South Wacker Drive
Chicago, IL 60606

Re: The tariff classification of milk protein concentrate from Denmark.

DEAR MS. MANCIAS:

In your letter, dated November 20, 1995, you have requested a tariff classification ruling on behalf of your client, MD Foods Ingredients, Inc., Rosemont, IL. The product, MPC 60, is milk protein concentrate. The ingredients are protein (60 percent minimum), lactose (16 percent maximum), fat (12.5 percent maximum), ash (7.5 percent maximum), and moisture (4.5 percent maximum). The pH is 6.7.

MPC 60 is a spray dried, ultrafiltered milk protein, made from pasteurized skim milk. It is designed to be used as a flavor enhancer in food.

The applicable subheading for the milk protein concentrate, MPC 60, will be 0404.90.1000, Harmonized Tariff Schedule of the United States (HTS), which provides for whey, whether or not concentrated or containing added sugar or other sweetening matter; products consisting of natural milk constituents, whether or not containing added sugar or other sweetening matter, not elsewhere specified or included, other, milk protein concentrates. The rate of duty will be 0.43 cents per kilogram. This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Ralph Conte at (212) 466–5759.

ROGER J. SILVESTRI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
New York, NY, January 16, 1997.

CLA–2–04:RR:NC:2:231 B80989
Category: Classification
Tariff No. 0404.90.1000

MR. ROBERT SEELY
KATTEN, MUCHIN, AND ZAVIS
525 West Monroe Street, Suite 1600
Chicago, IL 60661–3693

Re: The tariff classification of milk protein concentrate from Ireland.

DEAR MR. SEELY:

In your letter, dated December 12, 1996, you have requested a tariff classification ruling on behalf of your client, Kerry Ingredients, Beloit, WI.

The product is milk protein concentrate. The ingredients are 46 percent butterfat, 44 percent protein, 6 percent lactose, and 4 percent ash.

The milk protein concentrate is manufactured by the ultrafiltration of pasteurized, whole cow's milk. The concentrate is homogenized, pasteurized, and spray dried to produce a powder. The product will be used as an ingredient in a variety of powdered ingredients and seasonings that are manufactured domestically by the importer. It will be imported in 50 pound multi-wall bags.

The applicable subheading for the milk protein concentrate will be 0404.90.1000, Harmonized Tariff Schedule of the United States (HTS), which provides for whey, whether or not concentrated or containing added sugar or other sweetening matter; products consisting of natural milk constituents, whether or not containing added sugar or other sweetening matter, not elsewhere specified or included, other, milk protein concentrates. The rate of duty will be 0.41 cents per kilogram.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 FR 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import specialist Ralph Conte at (212) 466–5759.

GWENN KLEIN KIRSCHNER,
Chief, Special Products Branch,
National Commodity Specialist Division.

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
New York, NY, November 13, 1998.

CLA–2–04:RR:NC:2:231 D83787
Category: Classification
Tariff No. 0404.90.1000

MS. MICHELLE MANCIAS
SONNENBERG AND ANDERSON
200 South Wacker Drive, 38th Floor
Chicago, IL 60606

Re: The tariff classification of milk protein concentrate from Denmark.

DEAR MS. MANCIAS:

In your letter, dated October 16, 1998, you have requested a tariff classification ruling on behalf of your client, MD Foods Ingredients, Inc, Rosemont, IL.

The product, "PSD 852," is spray dried milk protein concentrate. It contains, by weight, 41 percent protein, 29 percent fat, 7 percent minerals, and 6 percent moisture. The pH is 6.5–6.8 percent. "PSD 852" will be used as a flavor enhancer in food.

The applicable subheading for "PSD 852" will be 0404.90.1000, Harmonized Tariff Schedule of the United States (HTS), which provides for whey, whether or not concentrated or containing added sugar or other sweetening matter; products consisting of natural milk constituents, whether or not containing added sugar or other sweetening matter, not elsewhere specified or included, other, milk protein concentrates. The rate of duty will be 0.39 cents per kilogram.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 CFR 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import specialist Ralph Conte at (212) 466–5759.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:GC 965212ptl
Category: Classification
Tariff No. 0404.90.30/0404.90.50

MS. MICHELLE MANCIAS
SONNENBERG AND ANDERSON
200 South Wacker Drive
Chicago, IL 60606

Re: Milk Protein Concentrate; NY 816940 revoked.

DEAR MS. MANCIAS:

This is in reference to NY 816940, dated December 6, 1995, issued to you on behalf of MD Foods Ingredients, Inc., by the Director, National Commodity Specialist Division, New York, in which an article, identified as milk protein concentrate, MPC 60, was classified in subheading 0404.90.10, Harmonized Tariff Schedule of the United States, (HTSUS), which provides for whey, whether or not concentrated or containing added sugar or other sweetening matter; products consisting of natural milk constituents, whether or not containing added sugar or other sweetening matter, not elsewhere specified of included, other, milk protein concentrates. We have reviewed that ruling and determined that the classification provided is incorrect. Pursuant to the analysis set forth below, the correct classification for the article is subheading 0404.90.30, HTSUS, which provides for whey, whether or not concentrated or containing added sugar or other sweetening matter; products consisting of natural milk constituents, whether or not containing added sugar or other sweetening matter, not elsewhere specified of included, other, other, dairy products described in additional U.S. note 1 to chapter 4: described in additional U.S. note 10 to this chapter and entered pursuant to its provisions.

Facts:

According to NY 816940, MPC 60, is a spray dried, ultrafiltered milk product, made from pasteurized skim milk, composed of the following ingredients: protein (60 percent minimum), lactose (16 percent maximum), fat (12.5 percent maximum), ash (7.5 percent maximum), and moisture (4.5 percent maximum). The pH is 6.7. The article is said to be designed to be used as a flavor enhancer in food.

Issue:

What is the classification of the milk protein concentrate, MPC–60?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied in order.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS headings under consideration are as follows:

0404	Whey, whether or not concentrated or containing added sugar or other sweetening matter; products consisting of natural milk constituents, whether or not containing added sugar or other sweetening matter, not elsewhere specified or included:
* * * * * * *	
0404.90	Other:
0404.90.1000	Milk protein concentrates
	Other:
	Dairy products described in additional U.S. note 1 to chapter 4:
0404.90.2800	Described in general note 15 of the tariff schedule and entered pursuant to its provisions.
0404.90.3000	Described in additional U.S. note 10 to this chapter and entered pursuant to its provisions.
0404.90.5000	Other[1]

The products being classified are described as milk protein concentrates produced by the ultrafiltration of pasteurized skim milk. Additional U.S. note 13 to Chapter 4 describes "Milk protein concentrates" as follows:

> 13. For purposes of subheading 0404.90.10, the term "milk protein concentrate" means any complete milk protein (casein plus lactalbumin) concentrate that is 40 percent or more protein by weight.

We must determine whether the instant products which are a mixture of concentrated milk protein and concentrated milk fat fall within the scope of Additional U.S. note 13.

We will begin by pointing out that Additional U.S. note 13 does not define the term "milk protein concentrate." Reading the note as a definition of "milk protein concentrate" would require using the term to define itself. Rather, the note is a statement that defines the range of milk protein concentrates which will be included within subheading 0404.90.10.

As stated above, the term "milk protein concentrate" is not defined by Additional U.S. note 13 to chapter 4. Further, it is not defined elsewhere in the Tariff or ENs. In the absence of a tariff definition, and if there is no Congressional intent to the contrary, HTSUS terms are understood to be consonant with their common and commercial meaning; and these meanings are presumed to be the same. *DMV USA, INC. v. United States*, ____ CIT ____, Slip Op. 01–99, Aug 10, 2001 (citing *Carl Zeiss, Inc. v. United States*, 195 F.3d 1375, at 1379 (Fed. Cir. 1999); *Simod Am. Corp. v. United States*, 872 F2d 1572, 1575 (Fed. Cir. 1989)). It is well settled that to determine the common meaning of a tariff term, "courts may and do consult dictionaries, scientific authorities, and other reliable sources of information * * *." *Nippon Kogaku, Inc. v. United States*, 69 CCPA 89, 92, 673 F.2d 380 (1982).

The word "concentrate" is defined in the *Oxford English Dictionary*, (2d. Ed. On CD-ROM), as "to increase the strength (of a solution or liquid) by contraction of its volume (e.g., by evaporation)." *The Random House Dictionary of the English Language*, (Unabridged Edition, 1973), defines "concentrate" as "to intensify; make denser, stronger, or purer by removing or reducing the foreign or inessential: *to concentrate fruit juice; to concentrate a sauce by boiling it down.*"

The *Oxford English Dictionary* defines the word "protein" as "In current use any one of a class of organic compounds, the proteins, consisting of carbon, hydrogen, oxygen, and ni-

[1] See subheadings 9904.04.50–9904.05.01.

trogen, with a little sulphur, in complex and more or less unstable combination; forming an important part of all living organisms, and the essential nitrogenous constituents of the food of animals; obtained as amorphous solids, differing in solubility and other properties, and usually coagulable by heat. Also called albuminoids, and very generally proteids."

The *Oxford English Dictionary* defines the word "milk" as "[A]n opaque white or bluish-white fluid secreted by the mammary glands of the female individuals of the Mammalia including man, and adapted for the nourishment of their young."

Based on these definitions, the common dictionary meaning of the words "milk protein concentrate" would be a protein product derived from milk in which the milk protein content has been intensified or purified by the removal of "foreign or inessential" milk constituents, such as water, minerals and lactose. The identity of a concentrate as a milk protein product would require that such a product contain milk protein as its sole substantive constituent, since the presence of two or more substantive, valuable or useful constituents would result in a product with the character of a mixture. This other product would not have the essential character of a milk protein product, but would be a mixture of milk protein and something else.

The dairy industry has specific terminology and parameters when referring to milk protein concentrate. A publication of the International Dairy Federation (IDF), *New Applications of Membrane Processes*, IDF Special Issue 9201, May 1992, Chapter 5, on "Milk Protein Concentrate" by A. Novak, of the Hungarian Dairy Research Institute, Mosonmagyrovar, Hungary, contains a discussion of the product. The relevant terminology and composition of the product is discussed as follows:

"As a result of the research carried out in recent years, milk protein concentrates with different protein contents have been produced by ultrafiltration for various utilization purposes. There is a great diversity of terms used in the literature dealing with these products: 'retenate powder', 'native milk protein concentrate', 'ultrafiltrated milk protein concentrate', 'milk powder from ultrafiltrated skim milk', skim milk retenate powder', 'high protein lactose free milk powder'. According to recommendations for standardizing the nomenclature within IDF, the terms 'milk protein concentrate' (MPC) and 'milk protein' (MP) will be used for products with a protein content of 50–85% and over 85%, respectively, if they are used using membrane separation. The actual protein content is indicated by the figure written after MPC or MP."

"MPC with defined functional properties is a preserved "milk protein product" which is produced from partially skimmed milk or skim milk by heat treatment (HTST, UHT), by partial removal of lactose and minerals, by protein concentration carried out with membrane separation (UF, sometimes with added diafiltration) and by water removal by evaporation (EV), spray-drying (SD) or freeze-drying (FD). It contains the casein and the whey proteins in their original proportions."

"The production of MPC is a process based on protein concentration by UF as well as preservation by heat treatment and water removal."

"The amounts of milk components remaining in the ultrafiltrated concentrate (retentate) and their proportions depend on the membrane cut-off, the UF concentration ratio and the degree of diafiltration (DF). The main components are proteins, minerals bound to the protein (Ca, P, Zn), lactose and lipids. The protein content of MPC can be selected in the range 50–90% protein/solids ratio. Typical compositions of MPC with 75 and 80% protein contents are shown in Table 5.1." [Table 5.1 shows a fat content of 1.5% for MPC–75 and 1.7% for MPC–80.]

Products which conform to the industry standard for MPC contain complete milk proteins, in their original proportions as their single substantive material (in terms of value and utility) with only residual levels of milk and fat. This contrasts with the instant product, MPC 60, with concentrations of 16% lactose and 12.5% fat.

The additional milk and fat concentrations in the instant MPC 60 product remove it from the class of products referred to a milk protein concentrate and place it into the category of a mixture of milk protein concentrate with milk fat, or ultrafiltrated milk. Milk protein products from which lactose, water and minerals have been removed, have the character of protein products, and have protein as their sole value. The instant MPC 60 and similar articles are mixtures of the valuable constituents of milk such as protein, lactose and fat are milk concentrates. Accordingly, because MPC 60 contains over 5.5 percent milkfat, and since it is suitable for use as an ingredient in the commercial production of edible articles, MPC 60 is classifiable in subheading 0404.90.3000, HTSUS. If the quota quantity

allocated to the quota provision has been filled, then classification will be in 0404.90.5000, HTSUS, with any applicable safeguard duties.

Holding:

MPC 60 which contains over 5.5 percent milkfat, and is suitable for use as an ingredient in the commercial production of edible articles, is classifiable in subheading 0404.90.3000, HTSUS, which provides for dairy products described in additional U.S. note 1 to chapter 4: * * * described in additional U.S. note 10 to this chapter and entered pursuant to its provisions. If the quota quantity allocated to the quota provision has been filled, then classification will be in 0404.90.5000, HTSUS, with any applicable safeguard duties.

NY 816940, dated December 6, 1995, is hereby revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT E]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:GC 965213ptl
Category: Classification
Tariff No. 0404.90.30/0404.90.50

MR. ROBERT SEELY
BARNES, RICHARDSON AND COLBURN
200 East Randolf Drive
Chicago, IL 60601

Re: Milk Protein Concentrate; NY B80989 revoked.

DEAR MR. SEELY:

This is in reference to NY B80989, dated January 16, 1997, issued to you on behalf of Kerry Ingredients, Beloit, WI., by the Director, National Commodity Specialist Division, New York, in which a milk protein concentrate was classified in subheading 0404.90.10, Harmonized Tariff Schedule of the United States, (HTSUS), which provides for whey, whether or not concentrated or containing added sugar or other sweetening matter; products consisting of natural milk constituents, whether or not containing added sugar or other sweetening matter, not elsewhere specified of included, other, milk protein concentrates. We have reviewed that ruling and determined that the classification provided is incorrect. Pursuant to the analysis set forth below, the correct classification for the article is subheading 0404.90.30, HTSUS, which provides for whey, whether or not concentrated or containing added sugar or other sweetening matter; products consisting of natural milk constituents, whether or not containing added sugar or other sweetening matter, not elsewhere specified of included, other, other, dairy products described in additional U.S. note 1 to chapter 4: described in additional U.S. note 10 to this chapter and entered pursuant to its provisions.

Facts:

According to NY B80989, the product is a homogenized, pasteurized, spray dried powder manufactured by the ultrafiltration of whole cows milk. The product is composed of the following ingredients (by weight): 44 percent protein, 46 percent butterfat, 6 percent lactose, and 4 percent ash. The article is said to be designed to be used as an ingredient in a variety of powdered ingredients and seasonings that are manufactured domestically. The product will be imported in 50-pound multi-wall bags.

Issue:

What is the classification of a milk protein concentrate?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). The systematic

detail of the HTSUS is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied in order.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS headings under consideration are as follows:

0404	Whey, whether or not concentrated or containing added sugar or other sweetening matter; products consisting of natural milk constituents, whether or not containing added sugar or other sweetening matter, not elsewhere specified or included:
* * * * * * *	
0404.90	Other:
0404.90.1000	Milk protein concentrates
	Other:
	Dairy products described in additional U.S. note 1 to chapter 4:
0404.90.2800	Described in general note 15 of the tariff schedule and entered pursuant to its provisions.
0404.90.3000	Described in additional U.S. note 10 to this chapter and entered pursuant to its provisions.
0404.90.5000	Other[1]

The products being classified are described as milk protein concentrates produced by the ultrafiltration of pasteurized skim milk. Additional U.S. note 13 to Chapter 4 describes "Milk protein concentrates" as follows:

> 13. For purposes of subheading 0404.90.10, the term "milk protein concentrate" means any complete milk protein (casein plus lactalbumin) concentrate that is 40 percent or more protein by weight.

We must determine whether the instant products which are a mixture of concentrated milk protein and concentrated milk fat fall within the scope of Additional U.S. note 13.

We will begin by pointing out that Additional U.S. note 13 does not define the term "milk protein concentrate." Reading the note as a definition of "milk protein concentrate" would result in using the term to define itself. Rather, the note is a statement which defines the range of milk protein concentrates which will be included within subheading 0404.90.10.

As stated above, the term "milk protein concentrate" is not defined by Additional U.S. note 13 to chapter 4. Further, it is not defined elsewhere in the Tariff or ENs. In the absence of a tariff definition, and if there is no Congressional intent to the contrary, HTSUS terms are understood to be consonant with their common and commercial meaning; and these meanings are presumed to be the same. *DMV USA, INC. v. United States*, ____ CIT ____, Slip Op. 01–99, Aug 10, 2001 (citing *Carl Zeiss, Inc. v. United States*, 195 F.3d 1375, at 1379 (Fed. Cir. 1999); *Simod Am. Corp. v. United States*, 872 F2d 1572, 1575 (Fed. Cir. 1989)). It is well settled that to determine the common meaning of a tariff term, "courts may and do consult dictionaries, scientific authorities, and other reliable sources of information * * *." *Nippon Kogaku, Inc. v. United States*, 69 CCPA 89, 92, 673 F.2d 380 (1982).

Accordingly, the word "concentrate" is defined in the *Oxford English Dictionary*, (2d. Ed. On CD-ROM), as "to increase the strength (of a solution or liquid) by contraction of its volume (e.g., by evaporation)." *The Random House Dictionary of the English Language*, (Unabridged Edition, 1973), defines "concentrate" as "to intensify; make denser, stronger, or purer by removing or reducing the foreign or inessential: *to concentrate fruit juice; to concentrate a sauce by boiling it down.*"

The *Oxford English Dictionary* defines the word "protein" as "In current use any one of a class of organic compounds, the proteins, consisting of carbon, hydrogen, oxygen, and nitrogen, with a little sulphur, in complex and more or less unstable combination; forming an important part of all living organisms, and the essential nitrogenous constituents of the

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[1] See subheadings 9904.04.50–9904.05.01.

food of animals; obtained as amorphous solids, differing in solubility and other properties, and usually coagulable by heat. Also called albuminoids, and very generally proteids."

The *Oxford English Dictionary* defines the word "milk" as "[A]n opaque white or bluish-white fluid secreted by the mammary glands of the female individuals of the Mammalia including man, and adapted for the nourishment of their young."

Based on these definitions, the common dictionary meaning of the words "milk protein concentrate" would be a protein product derived from milk in which the milk protein content has been intensified or purified by the removal of "foreign or inessential" milk constituents, such as water, minerals and lactose. The identity of a concentrate as a milk protein product would require that such a product contain milk protein as its sole substantive constituent, since the presence of two or more substantive, valuable or useful constituents would result in a product with the character of a mixture. This other product would not have the essential character of a milk protein product, but would be a mixture of milk protein and something else.

The dairy industry has specific terminology and parameters when referring to milk protein concentrate. A publication of the International Dairy Federation (IDF), *New Applications of Membrane Processes*, IDF Special Issue 9201, May 1992, Chapter 5, on "Milk Protein Concentrate" by A. Novak, of the Hungarian Dairy Research Institute, Mosonmagyrovar, Hungary, contains a discussion of the product.

"As a result of the research carried out in recent years, milk protein concentrates with different protein contents have been produced by ultrafiltration for various utilization purposes. There is a great diversity of terms used in the literature dealing with these products: 'retenate powder', 'native milk protein concentrate', 'ultrafiltrated milk protein concentrate', 'milk powder from ultrafiltrated skim milk', skim milk retenate powder', 'high protein lactose free milk powder'. According to recommendations for standardizing the nomenclature within IDF, the terms 'milk protein concentrate' (MPC) and 'milk protein' (MP) will be used for products with a protein content of 50–85% and over 85%, respectively, if they are used using membrane separation. The actual protein content is indicated by the figure written after MPC or MP."

"MPC with defined functional properties is a preserved "milk protein product" which is produced from partially skimmed milk or skim milk by heat treatment (HTST, UHT), by partial removal of lactose and minerals, by protein concentration carried out with membrane separation (UF, sometimes with added diafiltration) and by water removal by evaporation (EV), spray-drying (SD) or freeze-drying (FD). It contains the casein and the whey proteins in their original proportions."

"The production of MPC is a process based on protein concentration by UF as well as preservation by heat treatment and water removal."

"The amounts of milk components remaining in the ultrafiltrated concentrate (retentate) and their proportions depend on the membrane cut-off, the UF concentration ratio and the degree of diafiltration (DF). The main components are proteins, minerals bound to the protein (Ca, P, Zn), lactose and lipids. The protein content of MPC can be selected in the range 50–90% protein/solids ratio. Typical compositions of MPC with 75 and 80% protein contents are shown in Table 5.1." [Table 5.1 shows a fat content of 1.5% for MPC–75 and 1.7% for MPC–80.]

Products which conform to the industry standard for MPC contain complete milk proteins, in their original proportions as their single substantive material (in terms of value and utility) with only residual levels of milk and fat. This contrasts with the instant product which has concentrations of 6% lactose and 46% fat.

The additional milk and fat concentrations in the instant product remove it from the class of products referred to a milk protein concentrate and place it into the category of a mixture of milk protein concentrate with milk fat, or ultrafiltrated milk. Milk protein products from which lactose, water and minerals have been removed, have the character of protein products, and have protein as their sole value. The instant powdered milk concentrate and similar articles are mixtures of the valuable constituents of milk such as protein, lactose and fat are milk concentrates. Accordingly, because the powdered milk concentrate contains over 5.5 percent milkfat, and since it is suitable for use as an ingredient in the commercial production of edible articles, the powdered milk concentrate is classifiable in subheading 0404.90.3000, HTSUS. If the quota quantity allocated to the quota provision has been filled, then classification will be in 0404.90.5000, HTSUS, with any applicable safeguard duties.

Holding:

Powdered, milk concentrate which contains over 5.5 percent milkfat, and is suitable for use as an ingredient in the commercial production of edible articles, is classifiable in subheading 0404.90.3000, HTSUS, which provides for dairy products described in additional U.S. note 1 to chapter 4: * * * described in additional U.S. note 10 to this chapter and entered pursuant to its provisions. If the quota quantity allocated to the quota provision has been filled, then classification will be in 0404.90.5000, HTSUS, with any applicable safeguard duties.

NY B80989, dated January 16, 1997, is hereby revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

[ATTACHMENT F]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:GC 965214ptl
Category: Classification
Tariff No. 0404.90.30/0404.90.50

MS. MICHELLE MANCIAS
SONNENBERG AND ANDERSON
200 South Wacker Drive
Chicago, IL 60606

Re: Milk Protein Concentrate; NY D83787 revoked.

DEAR MS. MANCIAS:

This is in reference to NY D83787, dated November 13, 1998, issued to you on behalf of MD Foods Ingredients, Inc., by the Director, National Commodity Specialist Division, New York, in which a milk protein concentrate, PSD 852, was classified in subheading 0404.90.10, Harmonized Tariff Schedule of the United States, (HTSUS), which provides for whey, whether or not concentrated or containing added sugar or other sweetening matter; products consisting of natural milk constituents, whether or not containing added sugar or other sweetening matter, not elsewhere specified of included, other, milk protein concentrates. We have reviewed that ruling and determined that the classification provided is incorrect. Pursuant to the analysis set forth below, the correct classification for the article is subheading 0404.90.30, HTSUS, which provides for whey, whether or not concentrated or containing added sugar or other sweetening matter; products consisting of natural milk constituents, whether or not containing added sugar or other sweetening matter, not elsewhere specified of included, other, other; dairy products described in additional U.S. note 1 to chapter 4: described in additional U.S. note 10 to this chapter and entered pursuant to its provisions.

Facts:

According to NY D83787, the product, PSD 852, is a spray dried milk protein concentrate made from fresh milk. The PSD 852 is composed of the following ingredients (by weight): 41 percent protein, 29 percent fat, a maximum 7 percent minerals, and maximum 6 percent moisture (not stated, but also 17% lactose). The pH range is 6.5–6.8. The article is said to be designed to be used as a flavor enhancer in foods.

Issue:

What is the classification of a milk protein concentrate, PSD 852?

Law and Analysis:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). The systematic

detail of the HTSUS is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied in order.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are the official interpretation of the Harmonized System at the international level. *See* T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS headings under consideration are as follows:

0404	Whey, whether or not concentrated or containing added sugar or other sweetening matter; products consisting of natural milk constituents, whether or not containing added sugar or other sweetening matter, not elsewhere specified or included:
* * * * * * *	
0404.90	Other:
0404.90.1000	Milk protein concentrates
	Other:
	Dairy products described in additional U.S. note 1 to chapter 4:
0404.90.2800	Described in general note 15 of the tariff schedule and entered pursuant to its provisions.
0404.90.3000	Described in additional U.S. note 10 to this chapter and entered pursuant to its provisions.
0404.90.5000	Other[1]

The products being classified are described as milk protein concentrates produced by the ultrafiltration of pasteurized skim milk. Additional U.S. note 13 to Chapter 4 describes "Milk protein concentrates" as follows:

> 13. For purposes of subheading 0404.90.10, the term "milk protein concentrate" means any complete milk protein (casein plus lactalbumin) concentrate that is 40 percent or more protein by weight.

We must determine whether the instant products which are a mixture of concentrated milk protein and concentrated milk fat fall within the scope of Additional U.S. note 13.

We will begin by pointing out that Additional U.S. note 13 does not define the term "milk protein concentrate." Reading the note as a definition of "milk protein concentrate" would result in using the term to define itself. Rather, the note is a statement which defines the range of milk protein concentrates which will be included within subheading 0404.90.10.

As stated above, the term "milk protein concentrate" is not defined by Additional U.S. note 13 to chapter 4. Further, it is not defined elsewhere in the Tariff or ENs. In the absence of a tariff definition, and if there is no Congressional intent to the contrary, HTSUS terms are understood to be consonant with their common and commercial meaning; and these meanings are presumed to be the same. *DMV USA, INC. v. United States*, ____ CIT ____, Slip Op. 01–99, Aug 10, 2001 (citing *Carl Zeiss, Inc. v. United States*, 195 F.3d 1375, at 1379 (Fed. Cir. 1999); *Simod Am. Corp. v. United States*, 872 F2d 1572, 1575 (Fed. Cir. 1989)). It is well settled that to determine the common meaning of a tariff term, "courts may and do consult dictionaries, scientific authorities, and other reliable sources of information * * *." *Nippon Kogaku, Inc. v. United States*, 69 CCPA 89, 92, 673 F.2d 380 (1982).

Accordingly, the word "concentrate" is defined in the *Oxford English Dictionary*, (2d. Ed. On CD-ROM), as "to increase the strength (of a solution or liquid) by contraction of its volume (e.g., by evaporation)." *The Random House Dictionary of the English Language*, (Unabridged Edition, 1973), defines "concentrate" as "to intensify; make denser, stronger, or purer by removing or reducing the foreign or inessential: *to concentrate fruit juice; to concentrate a sauce by boiling it down.*"

The *Oxford English Dictionary* defines the word "protein" as "In current use any one of a class of organic compounds, the proteins, consisting of carbon, hydrogen, oxygen, and nitrogen, with a little sulphur, in complex and more or less unstable combination; forming an important part of all living organisms, and the essential nitrogenous constituents of the

[1] See subheadings 9904.04.50–9904.05.01.

food of animals; obtained as amorphous solids, differing in solubility and other properties, and usually coagulable by heat. Also called albuminoids, and very generally proteids."

The *Oxford English Dictionary* defines the word "milk" as "[A]n opaque white or bluish-white fluid secreted by the mammary glands of the female individuals of the Mammalia including man, and adapted for the nourishment of their young."

Based on these definitions, the common dictionary meaning of the words "milk protein concentrate" would be a protein product derived from milk in which the milk protein content has been intensified or purified by the removal of "foreign or inessential" milk constituents, such as water, minerals and lactose. The identity of a concentrate as a milk protein product would require that such a product contain milk protein as its sole substantive constituent, since the presence of two or more substantive, valuable or useful constituents would result in a product with the character of a mixture. This other product would not have the essential character of a milk protein product, but would be a mixture of milk protein and something else.

The dairy industry has specific terminology and parameters when referring to milk protein concentrate. A publication of the International Dairy Federation (IDF), *New Applications of Membrane Processes*, IDF Special Issue 9201, May 1992, Chapter 5, on "Milk Protein Concentrate" by A. Novak, of the Hungarian Dairy Research Institute, Mosonmagyrovar, Hungary, contains a discussion of the product.

"As a result of the research carried out in recent years, milk protein concentrates with different protein contents have been produced by ultrafiltration for various utilization purposes. There is a great diversity of terms used in the literature dealing with these products: 'retenate powder', 'native milk protein concentrate', 'ultrafiltrated milk protein concentrate', 'milk powder from ultrafiltrated skim milk', skim milk retenate powder', 'high protein lactose free milk powder'. According to recommendations for standardizing the nomenclature within IDF, the terms 'milk protein concentrate' (MPC) and 'milk protein' (MP) will be used for products with a protein content of 50–85% and over 85%, respectively, if they are used using membrane separation. The actual protein content is indicated by the figure written after MPC or MP."

"MPC with defined functional properties is a preserved "milk protein product" which is produced from partially skimmed milk or skim milk by heat treatment (HTST, UHT), by partial removal of lactose and minerals, by protein concentration carried out with membrane separation (UF, sometimes with added diafiltration) and by water removal by evaporation (EV), spray-drying (SD) or freeze-drying (FD). It contains the casein and the whey proteins in their original proportions."

"The production of MPC is a process based on protein concentration by UF as well as preservation by heat treatment and water removal."

"The amounts of milk components remaining in the ultrafiltrated concentrate (retentate) and their proportions depend on the membrane cut-off, the UF concentration ratio and the degree of diafiltration (DF). The main components are proteins, minerals bound to the protein (Ca, P, Zn), lactose and lipids. The protein content of MPC can be selected in the range 50–90% protein/solids ratio. Typical compositions of MPC with 75 and 80% protein contents are shown in Table 5.1." [Table 5.1 shows a fat content of 1.5% for MPC–75 and 1.7% for MPC–80.]

Products which conform to the industry standard for MPC contain complete milk proteins, in their original proportions as their single substantive material (in terms of value and utility) with only residual levels of milk and fat. This contrasts with the instant product, PSD 852, with concentrations of 17% lactose and 29% fat.

The additional milk and fat concentrations in the instant PSD 852 product remove it from the class of products referred to a milk protein concentrate and place it into the category of a mixture of milk protein concentrate with milk fat, or ultrafiltrated milk. Milk protein products from which lactose, water and minerals have been removed, have the character of protein products, and have protein as their sole value. The instant PSD 852 and similar articles are mixtures of the valuable constituents of milk such as protein, lactose and fat are milk concentrates. Accordingly, because PSD 852 contains over 5.5 percent milkfat, and since it is suitable for use as an ingredient in the commercial production of edible articles, PSD 852 is classifiable in subheading 0404.90.3000, HTSUS. If the quota quantity allocated to the quota provision has been filled, then classification will be in 0404.90.5000, HTSUS, with any applicable safeguard duties.

Holding:

PSD 852 which contains over 5.5 percent milkfat, and is suitable for use as an ingredient in the commercial production of edible articles, is classifiable in subheading 0404.90.3000, HTSUS, which provides for dairy products described in additional U.S. note 1 to chapter 4: * * * described in additional U.S. note 10 to this chapter and entered pursuant to its provisions. If the quota quantity allocated to the quota provision has been filled, then classification will be in 0404.90.5000, HTSUS, with any applicable safeguard duties.

NY D83787, dated November 13, 1998, is hereby revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

MODIFICATION OF RULING LETTER AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF ARM COVERS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of modification of ruling letter and revocation of treatment relating to tariff classification of arm covers.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying one ruling letter pertaining to the tariff classification of arm covers under the Harmonized Tariff Schedule of the United States (HTSUS). Customs is also revoking any treatment previously accorded by Customs to substantially identical transactions. Notice of the proposed actions was published on July 11, 2001, in Volume 35, Number 28, of the CUSTOMS BULLETIN. No comments were received in response to the notice.

EFFECTIVE DATE: This action is effective for merchandise entered or withdrawn from warehouse for consumption on or after December 3, 2001.

FOR FURTHER INFORMATION CONTACT: Joe Shankle, Textiles Branch, (202) 927–2379.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts that emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts

are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to Customs obligations, notice proposing to modify NY D88910, dated March 26, 1999, and to revoke any treatment accorded to substantially identical merchandise was published in the July 11, 2001, CUSTOMS BULLETIN, Volume 35, Number 28. No comments were received in response to the notice.

As stated in the proposed notice, this revocation will cover any rulings on the subject merchandise which may exist but which have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should have advised Customs during the comment period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by Title VI, Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, have been the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should have advised Customs during the comment period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of this final decision.

In NY D88910, Customs classified arm covers constructed of knit fabric consisting of 85% cotton and 15% spandex, under heading 6307, HTSUSA, which provides, in pertinent part, for other textile articles.

It is now Customs position that arm covers of the type discussed herein, are classifiable as clothing accessories under subheading 6117.80.9510, HTSUSA, which provides for: "Other made up clothing accessories, knitted or crocheted: knitted or crocheted parts of garments or of clothing accessories: Other accessories: Other: Other * * *

Of cotton." It is also our position that the arm covers, which were imported with a waist belt, and sleeveless pullover, form a composite good.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is modifying NY D88910, and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) 963874 (Attached). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after publication in the CUSTOMS BULLETIN.

Dated: September 18, 2001.

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, September 18, 2001.

CLA-2 RR:CR:TE 963874 JFS
Category: Classification
Tariff No. 6110.20.2075, HTSUSA

MR. HENRY TORAY
SPEED SOURCING, INC.
2140 City Gate Dr.
Columbus, OH 43219

Re: Modification of NY D88910; Classification of Arm Covers; Clothing Accessories; Composite Good.

DEAR MR. TORAY:

This letter is to inform you that Customs has reconsidered New York Ruling Letter (NY) D88910, issued to you on March 26, 1999, concerning the classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) of a knit waist belt, pullover, and arm covers. After review of that ruling, it has been determined that the classification of the arm covers in subheading 6307.90.9989, HTSUSA, was incorrect. In addition, the three articles form a composite good, which changes the classification of the waist belt as well. For the reasons that follow, this ruling modifies NY D88910.

Pursuant to section 625(c)(1) Tariff Act of 1930 (19 U.S.C. 1625(c)(1)) as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-82, 107 Stat. 2057, 2186), notice of the proposed revocation of NY D88910 was published on July 11, 2001, in the CUSTOMS BULLETIN, Volume 35, Number 28. As explained in the notice, the period within which to submit comments on this proposal was until August 10, 2001. No comments were received in response to this notice.

Facts:

In NY D88910, Customs classified the arm covers at issue in heading 6307, HTSUSA, which is a residual or basket provision for textile articles. The arm covers, a knit fabric

waist belt, and a ladies sleeveless knit pullover, were all imported together. The three items are sold and marketed as a "make your own outfit." They are designed so that the buyer can wear the pullover by itself, with the arm covers, with the waist belt, or with the arm covers and the waist belt. The items do not attach to one another by any means. All three items are composed of knit fabric consisting of 85% cotton and 15% spandex.

The waist belt (Style 7004C) is a tube-like design, is 4 ½ inches wide, has a snap button pocket and is ribbed at the top and bottom.

The sleeveless pullover (Style 9405099) has no front or back opening, has a crewneck, falls at or above the waist, and has a ribbed bottom.

The arm covers (Style 0637C) are tube shaped, and cover the arm. They have ribbed ends to secure them to the wearer's arms.

Issue:

Should the arm covers be classified under heading 6117, HTSUSA, HTSUSA, as clothing accessories, or under heading 6307, HTSUSA, as other made up textile articles?

Analysis:

Classification under the HTSUSA is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRI may then be applied.

The Harmonized Commodity Description and Coding System, Explanatory Notes (EN), represent the official interpretation of the Harmonized System at the international level (for the 4 digit headings and the 6 digit subheadings) and facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI. The EN, although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. See T.D. 89–80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

Heading 6117, HTSUSA, provides for "Other made up clothing accessories, knitted or crocheted; knitted or crocheted parts of garments or of clothing accessories." The term "accessory" is not defined in the tariff schedule or EN. Webster's New Collegiate Dictionary, (1977), defines "accessory" as a thing of secondary or subordinate importance or an object or device not essential in itself but adding to the beauty, convenience, or effectiveness of something else. In Headquarters Ruling Letter (HQ) 088540, dated June 3, 1991, Customs defined an accessory as an article that is related to the primary article, and intended for use solely or principally as an accessory. In heading 6117, HTSUSA, the accessories classifiable under this provision will be related to clothing, intended for use with clothing and of secondary importance to clothing. HQ 950470, dated January 7, 1992.

The alternative heading, 6307, HTSUSA, provides for other made up textile articles. This is not a true alternative in that heading 6307 is a "basket" provision intended to classify merchandise not provided for more specifically in other headings of the tariff. Accordingly, we must first determine whether classification is proper under heading 6117, HTSUSA, as clothing accessories. If not, we will address whether classification is proper under heading 6307, HTSUSA.

The EN to 6117, HTSUSA, and 6307, HTSUSA, both provide examples of articles that have similar characteristics as the arm covers under consideration. EN (6) to heading 6117, HTSUSA, lists sleeve protectors as being covered by the heading. Sleeve protectors are similar to arm covers in that they also provide protection for the arms. See HQ 961080, dated September 14, 1999 (ruling that polyurethane coated sleeve protectors that protect workers from animal fats and chemicals are clothing accessories); see also, HQ 961108 dated September 2, 1999; and HQ 961737, dated December 8, 1998.

The function of the arm cover is of primary importance when determining whether to classify it as a clothing accessory under 6117, HTSUSA. If the arm cover has a function completely divorced from any use with clothing and does not add to the beauty, convenience, or effectiveness, of clothing, it will not be considered a clothing accessory. HQ 952005, dated August 26, 1992.

In HQ 950659, Customs considered whether to classify arm covers that are similar to those now under consideration as clothing accessories. In that ruling, Customs revoked HQ 086378, dated April 9, 1990, that had classified arm covers as clothing accessories un-

der heading 6117, HTSUSA. Customs reclassified the arm covers under the basket provision of 6307, HTSUSA. The arm covers were described as:

> [T]ubular shaped items made of 43% angora, 18% lambswool, 26% polyamid and 13% elasthan which forms a fabric of a weft knit construction. They are specially designed to fit certain body parts, i.e., wrists, elbows, knees and backs. The articles are intended for use by people afflicted with arthritis or rheumatism. The primary purpose of these articles appears to be the maintenance of localized warmth, which in turn would provide greater comfort to the wearer. The wool and angora components also act to absorb perspiration and the elasticity of the items may in some cases provide support.

In making its decision to rescind its prior ruling, Customs considered whether the arm covers had a logical nexus with clothing. That is, did they either add to the clothing's (1) beauty, (2) convenience, or (3) effectiveness? Customs examined the function and use of the arm covers and concluded that the arm covers could not be considered clothing accessories because they did not satisfy any of the three requirements.

Applying these principles to the instant arm covers, Customs concludes that they are properly classifiable as clothing accessories. The arm covers satisfy all three of the requirements for clothing accessories, i.e., adding to clothing's beauty, convenience and effectiveness. The arm covers are composed of knit fabric in chief weight of cotton, as is the pullover; thus, the wearer is able to alter her clothing to suit her fashion needs. Moreover, the arm covers enable the wearer to conveniently and easily convert the sleeveless pullover into a long sleeved pull over, or vice versa, depending on the weather; thus, enhancing the convenience and effectiveness of the pullover.

For a similar ruling, see HQ 963734, dated March 28, 2001. In that ruling, Customs classified similar arm warmers as clothing accessories under heading 6117, HTSUSA. In HQ 963734, the arm warmers were designed to be worn with any short sleeved shirt. They were intended to be used by golfers and other sportsmen so that they could convert their regular short sleeved shirt into a long sleeved shirt and back again, depending on the weather.

The arm covers now under consideration are distinguishable from arm covers that have previously been classified by Customs as not being clothing accessories. See HQ 952005, dated August 26, 1992 (merino wool arm cover intended to be used for therapeutic purposes is not a clothing accessory); HQ 950470, dated January 7, 1992 (arm cover composed of neoprene rubber, and designed to retain heat for the treatment of arthritis and sporting injuries, is not a clothing accessory); HQ 954342, dated September 10, 1993 (wool arm covers designed to keep muscles and joints warm to reduce the discomfort associated with rheumatism and arthritis, are not clothing accessories). The arm covers in those rulings are distinguishable from those now under consideration, because they have no logical nexus with clothing. Instead they are wholly independent and separate from any items of clothing. Their function is to serve a therapeutic or medicinal purpose by fitting tightly over the arm thereby providing warmth and support. In contrast, the arm covers that are the subject of this ruling are not only clothing accessories, but they also have no medicinal or therapeutic purpose.

The arm covers are accessories to the sleeveless pullover and are properly classifiable at GRI 1 under heading 6117, HTSUSA. For a similar ruling, see HQ 963734, dated March 28, 2001.

The arm covers are imported, packaged, and sold along with the waist belt and sleeveless pullover. Therefore, it is necessary to consider classification of them in light of their relation to the waist belt and pullover.

Note 13, Section XI, provides:

> Unless the context otherwise requires, textile garments of different headings are to be classified in their own headings even if put up in sets for retail sale. For the purposes of this note, the expression "*textile garments*" means garments of headings 6101 to 6114
> * * *

Because the arm covers and waist belt are clothing accessories under heading 6117, HTSUSA, they are not "textile garments" for the purposes of note 13 to Section XI. The requirement that they be classified in their own heading is not applicable. See HQ 084796, dated September 5, 1989.

The combination of the sleeveless pullover, arm covers, and waist belt meet the definition of composite goods set out in the EN. The EN define composite goods as follows:

> [C]omposite goods made up of different components shall be taken to mean not only those in which the components are attached to each other to form a practically inseparable whole but also those with separable components, provided these components are

adapted one to the other and are mutually complementary and that together they form a whole which would not normally be offered for sale in separate parts.

The arm covers and waist belt are adapted to, and are mutually complementary to the sleeveless pullover, as well as to each other. They are designed, sold and marketed as a "make your own" outfit. All three items are made up of knit fabric in chief weight of cotton and they are specially fitted to be worn together. They form a whole that would not normally be offered for sale separately. The waist belt and arm covers are dependent upon the sleeveless pullover to lend them any sort of functionality.

Following GRI 3(a), when two or more headings refer to only part of composite goods, the headings are equally specific, and classification must be determined by GRI 3(b). GRI 3(b) provides for classification based upon that component which gives the composite good its essential character. In this case, the sleeveless pullover is that component. The sleeveless pullover may be worn with or without the arm covers and the waist belt, which are accessories to the sleeveless pullover. The arm covers are used to convert the sleeveless pullover into a long sleeved garment. Likewise, the waist belt is used to alter the pullover such that it extends further down the torso. The arm covers and waist belt are accessories to the pullover, which imparts the essential character of the composite good.

Accordingly, the arm covers and waist belt are classified with the sleeveless pullover under subheading 6110.20.2075, HTSUSA.

Holding:

The arm covers are classified under subheading 6110.20.2075, HTSUSA, textile category 339, which provides for "Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted: Of cotton: Other, Other: Other: Women's or Girls'. The general column one rate of duty is 17.8% percent *ad valorem*.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent negotiations and changes, we suggest that you check, close to the time of shipment, the *Status Report On Current Import Quotas (Restraint Levels)*, an issuance of the U.S. Customs Service, which is updated weekly and is available at the local Customs office.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, you should contact the local Customs office prior to importing the merchandise to determine the current status of any import restraints or requirements.

Effect on Other Rulings:

NY D88910, dated March 26, 1999, is hereby MODIFIED. In accordance with 19 U.S.C. §1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

JOHN ELKINS,
(for John Durant, Director,
Commercial Rulings Division.)

PROPOSED REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF ORGANIC ELECTRO-LUMINESCENT DISPLAY MODULES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of ruling letter and treatment relating to tariff classification of certain organic electro-luminescent (OEL) display modules.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of certain organic electro-luminescent (OEL) display modules under the Harmonized Tariff Schedule of the United States ("HTSUS"). Similarly, Customs proposes to revoke any treatment previously accorded by Customs to substantially identical transactions. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before November 2, 2001.

ADDRESS: Written comments are to be addressed to the U.S. Customs Service, Office of Regulations & Rulings. Attention: Regulations Branch, 1300 Pennsylvania Avenue N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address during regular business hours.

FOR FURTHER INFORMATION CONTACT: Tom Peter Beris, General Classification Branch, (202) 927–1726.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsi-

ble for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke New York Ruling Letter (NY) F82153 pertaining to the tariff classification of OEL display modules. Although in this notice Customs is specifically referring to one ruling, NY F82153, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to this notice.

In NY F82153, dated February 16, 2000, set forth as Attachment A to this document, Customs classified OEL display modules under subheading 8531.80.9025, HTSUS, which provides for other electric sound or visual signaling apparatus: Other apparatus: Other: Indicator panels: Other.

It is now Customs position that the OEL display modules are properly classifiable under subheading 8529.90.99, HTSUS, which provides for parts suitable for use solely or principally with the apparatus of headings 8525 to 8528: Other: Other: Other.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke NY F82153 and any other ruling not specifically identified in order to reflect the proper classification of the merchandise pursuant to the analysis set forth in proposed HQ 964887 (*see* "Attachment B" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Ser-

vice to substantially identical transactions. Before taking this action, we will give consideration to any written comments timely received.

Dated: September 19, 2001.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
New York, NY, February 16, 2000.

CLA–2–85:RR:NC:1:112 F82153
Category: Classification
Tariff No. 8531.80.9025

MR. ERIC R. ROCK
NIPPON EXPRESS USA, INC.
11417 Irving Park Road
Franklin Park, IL 60131

Re: The tariff classification of an electroluminescent display module from Japan.

DEAR MR. ROCK:

In your letter dated December 22, 1999 you requested a tariff classification ruling.

As indicated by the submitted sample and descriptive literature, the electroluminescent display module consists of a 96 x 32 pixel graphic dot matrix indicator panel that has been attached to a printed circuit assembly. This module will be incorporated into a cellular mobile phone and will display the information associated with a telephone call.

The applicable subheading for the electroluminescent display module will be 8531.80.9025, Harmonized Tariff Schedule of the United States (HTS), which provides for other electric sound or visual signaling apparatus: Other: Other. The rate of duty will be 1.3 percent ad valorem.

In your request, you state the opinion that the correct classification for this display module should be in subheading 8531.20.0020, HTS, which provides for indicator panels incorporating liquid crystal devices (LCD's) or light emitting diodes (LED's). Since the module in question incorporates electroluminescent material as the medium, it cannot be classified in a subheading that specifies only LCD or LED as the medium.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist David Curran at 212–637–7049.

ROBERT B. SWIERUPSKI,
Director,
National Commodity Specialist Division.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY.
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR: CR: GC 964887 TPB
Category: Classification
Tariff No. 8529.90.99

MR. ERIC R. ROCK
NIPPON EXPRESS U.S.A., INC.
11417 Irving Park Road
Franklin Park, IL 60131

Re: Organic Electro-Luminescent Display Module; Revocation of NY F82153.

DEAR MR. ROCK:

This is in response to your letter dated March 5, 2001, requesting reconsideration of New York Ruling Letter F82153, dated February 16, 2000, which was issued to you on behalf of Tohoku Pioneer of America, formerly Pioneer Speakers. NY F82153 dealt with the classification of organic electro-luminescent (OEL) display modules under the Harmonized Tariff Schedule of the United States ("HTSUS"). In F82153, the OEL display modules were classified under subheading 8531.80.9025, HTSUS, which provides for other electric sound or visual signaling apparatus, other apparatus, other, indicator panels, other.

As explained below, we now believe this classification to be incorrect. This ruling sets forth the correct classification.

Facts:

The OEL display module consists of a 96 x 32 pixel graphic dot matrix, electro-luminescent display that has been attached to a printed circuit assembly ("PCA"). The PCA includes anode and cathode drivers, mylar "dome pad" depression switches, and a flexible connector. This module will be incorporated into a cellular mobile phone and will provide touch pad display of all relevant call data.

Issue:

What is the proper classification of the organic electro-luminescent display modules?

Law and Analysis:

Classification under the HTSUS is made in accordance with the General Rules of Interpretation ("GRIs"). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes ("ENs") constitute the official interpretation of the Harmonized System at the international level. While neither legally binding nor dispositive, the ENs provide a commentary on the scope of each heading of the HTSUS and are generally indicative of the proper interpretation of these headings. See T.D. 89–80.

The HTSUS provisions under consideration are as follows:

8592	Parts suitable for use solely or principally with the apparatus of headings 8525 to 8528:
8592.90	Other:
	Other:
8529.90.99	Other.
8531	Electric sound or visual signaling apparatus (for example, bells, sirens, indicator panels, burglar or fire alarms), other than those of heading 8512 or 8530; parts thereof:
8531.80	Other apparatus:
8531.80.90	Other:
	Indicator panels:
8531.80.9025	Other.

To determine whether or not an article is a "part," we must ascertain if that article is necessary to the completion of the article with which it is used, that is, if it is an integral constituent or component part without which the parent article cannot function as that article. *Clipper Belt Lacer Co., Inc. v. United States*, 738 F.Supp. 528 (CIT 1990).

Section XVI, note 2, HTSUS, provides, in pertinent part, as follows:

> (a) * * *.
>
> (b) Other parts, if suitable for use solely or principally with a particular kind of machine, or with a number of machines of the same heading (including a machine of heading 8479 or 8543) are to be classified with the machines of that kind or in heading 8409, 8431, 8448, 8466, 8473, 8503, 8522, 8529 or 8538 as appropriate * * *.
>
> (c) * * *.

You have provided documentation that shows that in addition to the display itself, these modules contain anode and cathode drivers, mylar "dome pad" depression switches and a flexible connector which are critical components for the operation of a cellular telephone. With these components, the module is beyond the scope of visual signaling apparatus of heading 8531, HTSUS.

These display modules are integral component parts without which cellular telephones, classifiable under heading 8525, HTSUS, that they are intended for could not function. Therefore, they are classifiable under subheading 8529.90.99, HTSUS. This ruling is consistent with a previous Headquarters Ruling on similar merchandise (See HQ 960873, dated November 12, 1997).

Holding:

For the reasons stated above, the electro-luminescent (OEL) display module is to be classified under subheading 8529.90.99, HTSUS, as: "Parts suitable for use solely or principally with the apparatus of headings 8525 to 8528: Other apparatus: Other: Other."

Effect on Other Rulings:

NY F82153 is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division.

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